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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 72

THE INTERSTATE COMMERCE COMMISSION, APPELLANT

vs.

A. L. MECHLING, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF A. L. MECHLING BARGE LINE, INLAND WATERWAYS CORPORATION, THE SECRETARY OF AGRICULTURE, WAR FOOD ADMINISTRATOR, AND THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED MARCH 27, 1946

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3 In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action—File No. 45-C-865—Judge Igoe

A. L. MECHLING, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF A. L. MECHLING BARGE LINE, PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT

Complaint

Filed June 1, 1945

[File endorsement omitted.]

4 1. The plaintiff, A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, brings this complaint against the United States of America for the purpose of suspending, enjoining, setting aside, and annulling, the part hereinafter specified of a certain order issued by the Interstate Commerce Commission (hereinafter called the "Commission") on February 13, 1945, in a proceeding before the Commission known as "Investigation and Suspension Docket No. 4718, Grain Proportionals, Ex-barge to Official Territory." Said order is reproduced as Exhibit "A" hereof. On March 26,
5 1945, the Commission modified its said order, so that the same will become effective upon one day's notice on June 5, 1945.

2. The jurisdiction of the court to maintain this action under the averments herein made appears from the statutes of the United States in such case made and provided, and especially 28 U. S. C. A. 41 (28), 43, 44, 45, 45 (a), 46, 47 and 48.

3. Plaintiff is and for many years has been engaged as a common carrier in the business of water transportation, bringing grain to Chicago, Illinois, by barge, on the inland rivers and waterways, for reshipment at Chicago to interstate and foreign destinations lying east of Chicago.

4. At the same time certain common carriers by rail (hereinafter referred to as the "Western Railroads") have been and are engaged in rail transportation bringing grain to Chicago, Illinois, by rail, from most of the same origins served by the plaintiff, also for reshipment at Chicago to the same interstate and foreign destinations.

5. Also at the same times certain other common carriers by rail (hereinafter referred to as the "Eastern Railroads") have been and are engaged in the transportation of property by rail east from Chicago; and, more particularly, as to grain arriving at Chicago via rail, via barge, and via lake, from origins west, northwest and southwest of Chicago (grain so arriving being hereinafter referred to as ex-rail, ex-barge and ex-lake, respectively) and temporarily stored at Chicago before reshipment therefrom, said Eastern Railroads are, and for many years have been engaged in the transportation of such grain upon reshipment thereof from Chicago to destinations throughout the various states of the United States lying east of Chicago. At the times mentioned the Eastern Railroads so transported and still transport east from Chicago ex-barge grain brought to Chicago by plaintiff for reshipment there; plaintiff is a connecting carrier with the Eastern Railroads.

6. For many years the Eastern Railroads have maintained in tariffs, lawfully published and filed with the Commission, the same separately stated, reshipping or proportional rates from Chicago, Illinois, to destinations located in New England and in territory east of a northerly-and-southerly line drawn through Buffalo, New York, and Pittsburgh, Pennsylvania (hereinafter sometimes collectively called "eastern territory"), on ex-barge grain as on ex-lake or ex-rail grain, all of said reshipping or proportional rates to all points east of Chicago being lower than the corresponding rates published for application to local grain shipped from Chicago and Chicago rate points. By tariffs filed to become effective October 15, 1939 (Supplement No. 23 to Agent B. T. Jones' I. C. C. No. 3047, Supplement No. 67 to Agent B. T. Jones' I. C. C. No. 3055, Supplement No. 7 to Agent B. T. Jones' I. C. C. No. 3300, and Supplement No. 7 to Agent B. T. Jones' I. C. C. No. 3372), the Eastern Railroads proposed (a) to restrict the application of the said reshipping and proportional rates so as to make them not applicable to ex-barge grain when reshipped from Chicago; and (b) to subject said ex-barge grain to the higher basis of the local rates from Chicago. Representative examples of tariff rules which then and now provide for the application of the proportional or reshipping rates to ex-rail, ex-barge, and ex-lake traffic, and representative examples of the tariff rules containing the proposed restriction are contained in Appendices II and III to the report of Division 2 in Investigation and Suspension Docket No. 4718, Grain Proportionals Ex-Barge to Official Territory, reported in 246 I. C. C. 353. Certain parties (hereinafter sometimes called protestants) other than plaintiff filed with the Commission their written protest of September 1, 1939, and their supplemental written protest

of October 3, 1939, against such proposed schedules, alleging that, if made effective, the resultant increased rates provided for application to ex-barge grain would be unlawful under the Interstate Commerce Act, as that Act then read, and praying that the Commission institute an investigation and suspension proceeding under the authority conferred upon it by paragraph (7) of Section 15 of the Interstate Commerce Act (U. S. C., Title 49, Section 15 (7)).

7. Thereupon, the Commission, by order of October 14, 1939, suspended the operation of said proposed change in rates and instituted an investigation into the lawfulness thereof in Investigation & Suspension Docket No. 4718, above mentioned, and the Eastern Railroads, by appropriate supplements to their tariffs, deferred the effective date of the above described proposed change in rates on ex-barge traffic.

8. Subsequent to the entry of the said order of suspension, hearings were duly had in the proceeding instituted by that order, and on July 31, 1941, Division 2 of the Interstate Commerce Commission entered its report and order in said proceeding, said report and order being reported in 246 I. C. C. 353. In that report and order the said Division 2 found that the tariff schedules under suspension had not been shown to be unlawful. Accordingly, Division 2 vacated and set aside the suspension order and discontinued the proceeding as of August 30, 1941.

9. On August 22, 1941, the Commission modified the said order of Division 2 of July 31, 1941, so as to become effective on October 15, 1941, instead of August 30, 1941.

10. Thereafter, the said protestants, under date of August 25, 1941, filed with the Commission their petition for reconsideration and reargument, urging that under the facts and the law Division 2 should have found the proposal to be unlawful, and asking that the report and order of Division 2 be modified accordingly, and that the Commission order a permanent cancellation of the suspended tariff provisions.

11. On September 30, 1941, the Commission further modified said order of Division 2, of July 31, 1941, so as to postpone the effective date thereof until the further order of the Commission.

12. Thereafter, the Commission issued its report and order on reconsideration in said proceeding, said report and order being reported in 248 I. C. C. 307. In its said report the Commission stated that the proposed schedules had been shown to be just and reasonable and had not been shown to be otherwise unlawful and by its order the Commission vacated and set aside its order of suspension as of December 22, 1941, and discontinued the proceeding.

13. The record on the evidence upon which said orders of the Interstate Commerce Commission were entered, was closed in January, 1940, before enactment of Part III of the Interstate Commerce Act and before plaintiff was a regulated water carrier. Afterwards Congress amended the Interstate Commerce Act by enacting the Transportation Act of 1940. By said amendment, among other things, Part III was added to the Interstate Commerce Act, bringing water carriers under regulation by the Commission. After the taking effect of Part III of the Interstate Commerce Act (and after the plaintiff had been held in a collateral proceeding before the Commission as reported in 250 I. C. C. 77 to be a common carrier under Part III of that Act, which operating authority to plaintiff was later on extended by order of the Commission as reported in 250 I. C. C. 605) this plaintiff sought leave to intervene in said proceedings before the Interstate Commerce
9 Commission to assert rights claimed under the Transportation Act of 1940, and especially the National Transportation Policy and Section 3 (4) of the Interstate Commerce Act, as enacted by the Transportation Act of 1940, and, upon such intervention before the Commission, to present evidence in support of rights protected by said new enactment (unless the Commission were prepared to recognize such rights without further evidence). Plaintiff made such application for leave to intervene under special appearance, stating that this plaintiff could not and did not consent to be bound by a record on facts made at a time when plaintiff was not a party and before rights which it sought to assert existed, and before the statute creating those rights had been passed. The Commission denied plaintiff leave to intervene.

14. Thereafter protestants who had protested the said rate proposal of the Eastern Railroads filed their complaint in the United States District Court, praying that court to enjoin and set aside the operation and effect of the said order of the Commission effective December 22, 1941, and to prohibit said Eastern railroads from making effective and enforcing the change in their tariffs and schedules of rates said to have been approved as lawful by the Commission in said order; and this plaintiff joined in said proceeding before the District Court as an intervening plaintiff. Said District Court after due hearing entered a decree and permanent injunction as prayed in said complaint.

15. Appeal was then taken by the Eastern Railroads and others from said decree of said District Court to the Supreme Court of the United States. The Supreme Court held that the Commission in the last said order had not approved as lawful the said change in their tariffs and schedules proposed by the Eastern Railroads, and reversed the said decree of the District Court. The opinion

of the Supreme Court is reported at 319 U. S. 671, 87 L. ed. 1655.

10 16. This plaintiff then moved the Commission to reopen said proceeding, Investigation and Suspension Docket 4718, etc., and to permit plaintiff to offer evidence and be heard, which motion is reproduced as Exhibit "B" hereof; whereupon, on July 13, 1943, responsive to such motion, the Commission by its order reproduced as Exhibit "C" hereof reopened said proceeding and directed that the motions of this plaintiff, and similar motions of others, stand as complaints. Further evidence was introduced before the Commission.

17. On February 13, 1945, in said reopened proceeding, the Commission entered its order reproduced as Exhibit "A" hereof, of part of which plaintiff complains herein as aforesaid.

In and by said order the Commission disapproved, and ordered cancelled, the rate proposal it had refused to order cancelled at the time of the entry of the said order effective December 22, 1941, and which was the subject of the aforesaid legal proceedings, and which rate proposal never became effective; and plaintiff does not complain of that action.

But, in and by said order, and more particularly the report which is made part thereof, the Commission prescribed increased proportional rates to be charged by the Eastern Railroads for the transportation east from Chicago of ex-barge grain, which new rates, so prescribed, are higher than the established charges of the Eastern Railroads for the transportation to the same destination east of Chicago of ex-rail grain from the same origin. Said new rates so prescribed on ex-barge grain are higher than the established and unchanged charges of the Eastern Railroads made for the transportation of all ex-rail and all ex-lake grain, notwithstanding said higher rates are so prescribed

11 to be charged on ex-barge grain that comes from the same origin as does ex-rail grain that takes the lower, established, rates; and notwithstanding said higher rates are so prescribed to be charged on all ex-barge grain at the same time that the lower established rates of the Eastern Railroads continue to apply for their transportation service on all ex-rail and all ex-lake grain transited at Chicago, whatever the origin thereof may be; of which said action this plaintiff here complains.

Particularly the Commission found that reshipping or proportional rates for the transportation in carloads of ex-barge grain from Chicago, Illinois, to destinations easterly therefrom, will be lawful when set at certain differentials under the local rail rates from Chicago to those same destinations, namely the following differentials per hundred pounds:

When local rail rate on grain is (cents):

13–14.
15–22.
23–24.
25–26.
27–28.
28.5 and over.

Differential, ex-barge under local rail rate, shall be (cents):

1.
2.
3.
4.
5.
5.5.

Said differentials prescribed by the said order approve charges for rail transportation of ex-barge grain east from Chicago that are higher than the charges therefor on ex-rail grain from the same origins and higher than the charges therefor on ex-lake grain from all origins, by varying amounts, and higher by 3 cents per hundred pounds to eastern territory destinations, which are the most important grain destinations east of Chicago, whereof plaintiff complains.

12 18. The portion of the said order of February 13, 1945, herein complained of is contrary to law and the Interstate Commerce Act, as amended; it is contrary to Section 3 (4) of said Act as amended by the Transportation Act of 1940; it is in violation of the National Transportation Policy as enacted by the Transportation Act of 1940; in prescribing said ex-barge rates the Commission considered as warranting the portion of said order here complained of matters that do not warrant it, and that the Commission had no right in law to consider as warranting it, and matters which afford no rational basis for said portion of said order under the Interstate Commerce Act as amended in 1940; the Commission did not make findings supporting the said portion of said order here complained of; said portion of said order here complained of is not supported by the evidence before the Commission.

19. All grain of like grade and kind comes to a common value at Chicago, Illinois, regardless of the means of transportation by which it reached Chicago, the length of the inbound haul, or the rate paid for the inbound movement, provided it can all (as at present) be reshipped to eastern territory on the same charges and transited (as at present) in central territory for delivery in eastern territory on the basis of equal rates from Chicago to eastern territory. If the said order of the Commission shall become

effective it would cost more (and, to all eastern territory, three cents a hundred pounds more) for rail transportation east from Chicago of all ex-barge grain, than for said transportation of all ex-rail and ex-lake grain.

20. If the said order of the Commission should become effective, a large part of the traffic in grain now transported to Chicago, Illinois, by plaintiff, would be diverted to the lines of the Western Railroads that bring grain to Chicago from the same origins served by plaintiff.

13 21. Said report and order herein complained of expressly contemplates, that after said rate differential becomes effective, grain brought to Chicago, Illinois, by barge may sell at a discount, and fails to find that thereafter any grain will be brought to Chicago by barge for transportation east by rail.

22. The said order errs and is void for that, among other things herein also more generally mentioned, as to ex-barge and ex-rail grain, both coming from the same origin west of Chicago, Illinois (and as to ex-lake grain from any origin), receiving a transit stop at Chicago, said order prescribes higher charges for rail transportation east from Chicago of all such ex-barge grain than for any such ex-rail and ex-lake grain; and for that in so doing:

(a) Said order authorizes, permits, and prescribes a discrimination against the traffic of plaintiff, and in favor of ex-rail grain coming from the same origins served by plaintiff west of Chicago (and in favor of ex-lake grain from any origin) contrary to the Interstate Commerce Act, as amended, and particularly Section 3 (4) thereof;

(b) Said order prescribes said increase in established charges of the Eastern Railroads on ex-barge grain, and on ex-barge grain alone, on a finding that the higher charges so prescribed fully reflect the contribution of this barge grain to the transportation economy, which finding is without support in any evidence before the Commission, and which finding is contrary to undisputed evidence that the said increase of the established ex-barge rates out of Chicago to the east partly destroys, offsets, and nullifies, the inherent low-cost advantage of barge transportation into Chicago from the west, contrary to the Interstate Commerce Act, as amended in 1940.

(c) Said order prescribes the relation between charges of the Eastern Railroads for said transportation east from Chicago 14 of grain brought there by plaintiff on the one hand, and grain brought to the same transit point by the Western Railroads from the same origins served by plaintiff on the other hand, on the basis of certain average conditions therein stated rather than the particular circumstances and conditions actually characteristic of grain traffic through Chicago from the origins

that are served both by the Western Railroads and also by barge, in transportation of grain reshipped at Chicago;

(d) Said order predicates its conclusion in prescribing said rate differential unfavorable to ex-barge grain and favorable to ex-rail and ex-lake grain on a finding that the average length of all rail hauls of grain into Chicago, Illinois (which includes all-rail hauls from origins not competitive with or accessible to barge or other water transportation), is greater than the average length of all barge hauls of grain into Chicago, which finding has no rational bearing on the non-discriminatory relationship that should exist under the Interstate Commerce Act between the charges for rail transportation service in moving east from Chicago grain brought there by rail and barge, respectively, from the same origin, whether that origin is St. Louis, Missouri, Morris, Illinois, or any other particular port from which grain can be, at the shipper's choice, brought into Chicago for reshipment there either by the Western Railroads or by plaintiff (or some other barge carrier); and no bearing on the non-discriminatory relationship that should exist under the Interstate Commerce Act between the charges for rail transportation service in moving east from Chicago grain brought there by lake steamer and by barge, respectively, from whatever origin.

(e) Said order prescribes the relationship it specifies between the ex-barge, ex-rail and ex-lake grain rail rates of the Eastern Railroads out of Chicago on a finding that ex-barge grain, on the average receives more rail terminal and transit service than ex-rail grain, which finding is not rationally related to the conclusion that ex-rail grain which receives the full terminal
15. and transit service allowed by the rail tariffs should receive any lower basis of charge than ex-barge grain receiving only the same terminal and transit service, nor to the conclusion that ex-lake grain (all of which has a transit stop at Chicago and full transit service) should receive any lower basis of charge than ex-barge grain, nor is there either evidence or finding that the difference in cost of transit service between ex-barge grain, ex-rail grain, and ex-lake grain, is substantial, or rationally related in amount to the amount by which said order prescribes an increase in the ex-barge rates.

(f) Said order predicates said rate differential it prescribes on a finding that ex-rail grain receives, on the average, less line-haul service to southern points of central territory, but there is no finding that this is true as to ex-rail grain moving through Chicago; nor is that finding rationally related to the said increase so prescribed in ex-barge rates to New England and Eastern territory.

(g) In finding that the ex-barge traffic cannot be accorded the same out-bound proportionals as ex-rail traffic for the reason that to do so would extend to barge-rail transportation most of the advantages of all-rail transportation, the Commission predicates the rate differential above referred to on a misconstruction of the Interstate Commerce Act as amended by the Transportation Act of 1940, which, in directing the Commission to administer and enforce every section of the Interstate Commerce Act so as to preserve the inherent advantages of the modes of transportation therein referred to, meant not merely their preservation as advantages to be enjoyed by the persons operating the respective modes of transportation, but directed the administration and enforcement of the Interstate Commerce Act and each section thereof so as to preserve the advantages of the various modes of transportation in the interest of the needs of commerce and the national defense. The increase of the cost of barge-rail transportation authorized by said order, by increasing the established levels of rail charges for the out-bound transportation of
16 grain east from Chicago, Illinois, is a sacrifice of inherent low-cost advantage of water transportation to Chicago; and the diversion of grain traffic into Chicago from the low cost water line of this plaintiff to the higher cost rail lines of the Western Railroads, that would follow the said increase in the established charges for rail transportation of grain out-bound from Chicago that has come there by barge, would be to increase the cost of transportation of grain through Chicago, Illinois, thereby failing to preserve and sacrificing inherent low-cost advantage of in-bound barge transportation, all to the prejudice of the needs of commerce and the national defense, contrary to the Interstate Commerce Act as amended.

(h) The Commission was without authority, in law or in fact, to make the portion of the said order herein complained of.

Wherefore, plaintiff prays:

(a) That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of the Commission of February 13, 1945, as to that portion thereof that authorizes the imposition of a basis of rail charges for the transportation of ex-barge grain out of Chicago that is differentially as unfavorable to ex-barge grain, and as favorable to ex-rail and ex-lake grain, as is therein authorized, and that upon final hearing a decree be entered perpetually enjoining and setting aside the said operation and effect of said order;

(b) That plaintiff have such other, further or different relief in the premises as the nature of the case shall require and to this court shall seem proper.

Lord, Bissell & Kadyk,
Edward B. Hayes,
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EDWARD B. HAYES,
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2400 Field Building, Chicago, Illinois.

17 *Exhibit A to complaint*

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 4718

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY

Submitted January 5, 1945—Decided February 13, 1945

On further hearing, reasonable and otherwise lawful proportional rates prescribed for the interstate transportation of ex-barge grain, in carloads, from Chicago, Ill., to destinations in official territory. Proposed schedules ordered canceled, without prejudice to the filing of new schedules in conformity with the findings herein. Prior reports, 246 I. C. C. 353, 248 I. C. C. 307.

F. H. Cole, L. P. Day, K. A. Dobbins, and Arthur Van Meter for respondents.

H. C. Barron, Freeman Bradford, L. H. Dugan, A. B. Enoch, Henry Christianson, Lawrence Farlow, P. F. Gault, E. A. Gorges, B. L. Hamilton, J. W. Holloway, E. M. Martin, E. L. Peterson, W. R. Scott, E. A. Smith, C. L. Taylor, and M. V. Wheat for interveners supporting respondents.

J. K. Knudson and C. B. Nutting for United States Department of Agriculture and War Food Administrator.

D. F. Cavers, R. H. Field, B. M. Fitzgerald, M. D. Miller, and Warren Price, Jr., for Federal Price Administrator.

H. C. Banks, G. W. Baxter, N. D. Belnap, S. H. Benson, J. S. Brown, H. H. Dewey, E. B. Hayes, I. M. Herndon, W. E. Maloney, F. R. Markland, M. C. Pearson, D. F. Root, F. H. Sparrow, C. J. Steffen, and L. M. Walter for other protestant petitioners.

SPLAWN, Commissioner:

Exceptions were filed to the report proposed by the examiner on further hearing, and the parties were held in oral argument.

INTRODUCTION

By schedules filed to become effective October 15, 1939, respondent rail carriers in official territory proposed to restrict their reshipping or proportional rates[1] on grain and grain products, in carloads, from Chicago, Ill., to destinations in official territory so that they would not apply on ex-barge (Illinois Waterway) traffic except on grain products from Kansas City, Mo. To central territory the proportionals from Chicago on grain coming in by barge from the Illinois ports average about 3.3 cents less than the local rates and are the same as the so-called Northwest proportionals applying on grain coming in by rail or lake from the Northwest, hereinafter described, and on grain coming in by barge from Kansas City average 5.3 cents under the local rates and are the same as the so-called trans-Mississippi proportionals which apply on grain coming in by rail from origins west of the Mississippi other than the Northwest. To trunk-line and New England territories, the proportionals from Chicago on grain coming in by barge from both the Illinois ports and Kansas City are 8.5 cents under the local rates and are the same as the uniform proportional rates applying on ex-lake grain and on grain coming in by rail from origins west of the Mississippi River and the unpublished
19 outbound specifics of the through one-factor all-rail rates applying to those territories from Illinois origins. The proposed schedules deal not only with ex-barge grain from Chicago but also from Peoria, Ill., and St. Louis, Mo., all three points being hereinafter referred to as the gateways. However, ex-barge grain presently takes local rates from St. Louis, and in most instances from Peoria. The effect of the proposed schedules would be to increase the ex-barge proportionals from Chicago to the full local basis.

In the original report, 246 I. C. C. 353, division 2 found that the application of the proportional rates on the ex-barge traffic from Chicago was without tariff authority and that the proposed schedules merely clarified this situation and were not shown to be unlawful. In the report on reconsideration, 248 I. C. C. 397, we found that the proportional rates on the ex-barge traffic from Chicago were legally applicable in the past where the policing

[1] Unless otherwise indicated, rates, margins, and similar figures given herein are in cents per 100 pounds.

provisions of the governing tariffs were strictly complied with, and that the proposed schedules were shown to be just and reasonable and not shown to be otherwise unlawful. We added that in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than the local rates under section 6 (11) (b) of the act or joint barge-rail rates lower than the combination of the barge rates to the gateway plus the local rates beyond under section 15 (3) and 307 (d). An order was entered vacating the order of suspension and discontinuing the proceeding.

Ex-barge, ex-lake, and also ex-rail traffic except as hereinafter indicated, are all accorded the same outbound service, but we found, in effect, that there are circumstances and conditions affecting the outbound and through rates which are so different on the ex-barge traffic as compared with the ex-rail and ex-lake traffic that some difference in rate treatment is justified without contravening the provisions of sections 1, 2, 3 (1); 3 (4), and 15a (2) of the act, administered, as the act requires, "with a view to carrying out" the national transportation policy. Certain of the protestants sought an injunction against the enforcement of our order on the ground that such circumstances and conditions were beyond our authority to consider. The statutory court granted such injunction, but on appeal this action was reversed by the Supreme Court, which held that we had acted within the power delegated to us by law. Interstate Commerce Commission v. Inland Waterways Corporation, 319 U. S. 671. Thereafter, upon petition of certain of the protestants, we reopened the proceeding for further hearing for the purpose of receiving evidence (1) on the questions of whether or not reshipping or proportional rates should be prescribed for interstate transportation by rail of ex-barge grain, in carloads, from Chicago and other related points of origin embraced in the instant proceeding to eastern destinations considered therein, and if so to determine what would be reasonable and otherwise lawful proportional or reshipping rates for application on such traffic, and (2) to determine what, if any, reasonable and otherwise lawful joint rates for the interstate transportation of grain, in carloads, from points of origin served by A. L. Mechling, doing business as A. L. Mechling Barge Line, to said eastern destinations, shall be prescribed. Respondents have voluntarily postponed the effective date of the proposed schedules pending the outcome of the further hearing.

Petitioner-protestants appearing at the further hearing include certain grain dealers and elevator operators at Chicago and along the Waterway, the Inland Waterways Corporation, operating the Federal Barge Line, the Illinois Agricultural Association, and the United States Department of Agriculture, which appeared as

protestants at the original hearing, the Chicago Board of Trade, which supported respondents at the original hearing, and,
21 in addition, the Mechling Barge Line, certain rail and river elevator operators with headquarters at Peoria, Ill., the Corn Exchange of Buffalo, N. Y., the Montana Flour Mills of Cleveland, Ohio, the American Farm Bureau Federation, the War Food Administrator, and the Federal Price Administrator. Interveners supporting respondents on further hearing are the western rail carriers, the Board of Trade of Indianapolis, Ind., and associations of private and farmer cooperative grain elevator companies at numerous stations in the State of Illinois, which appeared in support of respondents at the original hearing, and, in addition, the Kansas City Board of Trade, and Kansas-Missouri River Mills. The Peoria Board of Trade and Mississippi Valley Association, which supported respondents and protestants, respectively, at the original hearing, did not appear at the further hearing.

The parties generally adhere to their original position; that is, protestant-petitioners contend that the ex-barge traffic is entitled to proportionals no higher than the ex-rail and ex-lake traffic, while interveners contend that it is entitled to nothing lower than the local rates. Protestant-petitioners contend that there is no material difference in the circumstances and conditions affecting the outbound and through rates on the barge-rail, lake-rail, and all-rail traffic, and that assuming the ability of the barge carrier to maintain inbound rates on a lower basis than the rail rates is an inherent advantage of barge transportation, within the meaning of the national transportation policy, and that the proportional rates maintained by respondents are reasonable for the service beyond the gateways, the application on the ex-barge traffic of rates higher than such proportionals pro-tanto deprives shippers and the general public of such inherent advantage and results in rates in contravention of the above provisions of the act. Respondents and interveners contend that the cir-
22 cumstances and conditions affecting the out-bound and through rates on the barge-rail traffic are substantially and materially different from those affecting the out-bound and through rates on the lake-rail and all-rail traffic. As to the latter, they contend that "to take the all-rail rates and chop them in the middle" and apply the outbound division or proportion to the ex-barge traffic is to accord the barge transportation an artificial advantage and pro-tanto to deprive those interested in rail transportation of the inherent advantages thereof, and that therefore respondents may lawfully maintain higher rates on the ex-barge traffic than on the ex-rail traffic.

The parties agree that there is no necessity for joint rates on the barge-rail traffic and that the ex-barge proportionals should be subject to the customary differentials an the products and export traffic. The result of the further hearing, in the language of the Court, has been "to develop a record upon which the Commission may prescribe rates on the ex-barge traffic (from Chicago) in view of its particular circumstances and under the provisions of the act designed with reference thereto."

In recent years, a comprehensive inland waterway system has been developed, largely at public expense, in connection with the Mississippi River and its tributaries, certain rivers in Alabama, and the intra coastal canals. The present proceeding is important not only as to the particular traffic under consideration but also insofar as it may provide administrative standards which may be used as guides in fitting barge transportation into the general rate structure, particularly on grain and grain products, under the governing statutory provisions, in fairness to all concerned, and in the public interest generally.

The facts adduced at the original hearing are correctly summarized in the original and prior reports, except as hereinafter indicated, and need not be repeated here except to complete understanding of the situation. The principal changes as developed on further hearing are the decline in the lake traffic from and to Chicago due to scarcity of boats and higher war-time rates, the shift from a buyer's to a seller's market, the fixing of ceiling prices and margins by the Federal Price Administrator, and the granting by division 4 of a certificate to operate as a common carrier of grain to the Mechling Barge Line, which now handles practically all the grain moving from the Illinois origins to Chicago. *A. L. Mechling Barge Line Common Carrier Application*, 250 I. C. C. 77, 605.

The record, as amplified on further hearing, is very comprehensive. It includes documentary evidence as to the rate and production-shipment situations, and oral testimony as to the all-rail, lake-rail, and barge-rail rate adjustments, the service and commercial situations thereunder, rate history, and the effect of the rates on the movement of the traffic.

The rate evidence is summarized in tabular form in appendix A hereto. Table I shows the average local and proportional rates to representative destinations in central and trunk-line and New England territories. To show the relative level of these rates, they are compared with the so-called western trunk-line scale, which is the present-day equivalent of the scale set forth in Grain and Grain Products, 161 I. C. C. 619, 822. Table II shows to representative destinations from Chicago the present local rates and ex-rail and ex-lake proportionals and the ex-barge

proportionals prescribed herein. In those tables, Trans-Mississippi, Northwest, and Illinois proportionals are referred to as T. M., N. W., and Ill., respectively. Under the proposed schedules, the ex-barge proportionals from Chicago would be increased from an average of (a) 16.1 cents (Northwest) and 14.1 cents (T. M.) to central territory and (b) 24 cents to trunk-line and New England territories, to the local rates averaging 19.4 and 32.5 cents, respectively. Table III shows from representative origins in 7 grain producing States west of the Mississippi River, the average rates to Chicago, and the average through all-rail rates to the respective destination territories, as compared with the through rates under the w. t. l. scale, and the balances or increments under the scale for the distances beyond Chicago. Tables IV and V show like information from the principal origins served by the Waterways, together with the inbound barge rates and the through barge-rail rates on the present basis, and those proposed by respondents and prescribed herein.

The production-shipment evidence is summarized in appendix B hereto. Table I shows the production of wheat and corn by certain States and groups of States for the year 1942. Table II shows for the same year the receipts of wheat and corn at the principal markets. Table III shows the volume of corn, wheat, oats and soybeans received at Chicago and shipped therefrom during 1940, 1941, 1942, and the first 10 months of 1943, and is a continuation of appendix I to the original report, 246 I. C. C. 353, 383–384. Table IV is an analysis of barge corn shipped to Chicago from the Illinois origins for a representative period during 1942–1943, according to distance from the Waterway, comparing the total on the barge shipments of the inbound truck cost, the barge rate, and the trimming charge with the corresponding interstate and lake local rates by rail.

Grain is a heavy-loading, fungible, bulk commodity and is peculiarly adapted to barge and carload transportation.

THE ALL-RAIL ADJUSTMENT

The rates for all-rail movement from and to the points here considered are a part of the all-rail rate structure on grain and grain products to official territory from origins west of Lake Michigan and the Illinois-Indiana line. The through rates from origins west of the Mississippi River are combinations over one or more of the gateways, or final terminal markets, composed of inbound factors prescribed by us in Grain and Grain Products, supra, and subsequent proceedings, and applying both locally and proportionally, plus the eastern factors, which are lower than the local rates beyond.

From Iowa and Missouri, the through rates are generally on a two-factor combination. From western and southwestern origins beyond the Minnesota and Missouri river primary markets the through rates are on a three-factor combination, composed of local or gathering rates to those markets, plus intermarket proportionals from those markets to the gateways and the outbound proportional beyond. With respect to the nature of this adjustment, we said in Grain and Grain Products, 215 I. C. C. 83, 95:

"St. Louis, Peoria, and Chicago are final terminal markets in the western district, situated at the eastern edge of that district. The important proportional rate adjustment in western trunk-line territory is the one to those markets (rather than between them) from the first line of markets at the Missouri River, Minneapolis, and Duluth. On shipments beyond those markets to the East the important adjustment is the equalization of the through charge, by making the outbound reshipping rates from Peoria on trans-Mississippi River traffic, and from St. Louis on all traffic, higher than from Chicago by the amount that the inbound rates to Peoria and St. Louis are lower than to Chicago."

26 To trunk-line and New England territories the proportionals from Chicago and other gateways are uniform regardless of origin. From Chicago to central territory there are three sets of outbound proportionals depending on the origin territory, namely, the Northwest proportionals applying on traffic originating in North Dakota, South Dakota, Minnesota, Wisconsin, the upper peninsula of Michigan, Montana, Wyoming, Idaho, Oregon, Washington, and certain Canadian provinces, the Trans-Mississippi proportionals applying from other origins west of the Mississippi River, and the Illinois proportionals applying on grain originating in Illinois territory. See appendix A, tables I and II. The Northwest and Trans-Mississippi proportionals are on the basis prescribed by us primarily for the purpose of equalizing the Minnesota and Missouri River markets. Southwestern Millers' League v. Atchison, T. & S. F. Ry. Co., 225 I. C. C. 195.

From Illinois, through one-factor rates apply (a) to destinations in central territory in all instances on grain products and in a few instances on grain and (b) to destinations in trunk-line and New England territories on both grain and products. Of the latter, the divisions or outbound specifics according to the lines east of Chicago and Illinois-Indiana junction points as far south as Vincennes, Ind., are the same as the uniform proportional rates applicable from Chicago on grain from the West. The differences between such divisions or specifics and the through rates are known as inbound specifics. From northern Illinois (north of the line of the Toledo, Peoria & Western), the inbound specifics are generally the same as the inbound interstate rates. From central

and southern Illinois, the inbound specifics are generally lower than the inbound interstate rates. The primary object of the Illinois rail adjustment is to enable the north-and-south carriers to participate over their circuitous routes via Chicago in rates
27 the same as those over the direct routes of the east-and-west carriers. Due principally to the equalization of gateways and routes, the ex-rail proportionals to central territory do not bear any consistent relation to the local rates from Chicago but reflect a rapidly decreasing percentage thereof as the distance from and the circuity via Chicago increases (See appendix A, table II).

The history of the uniform ex-rail proportionals or specifics to trunk-line and New England territories, using New York, N. Y., as illustrative, is as follows: Prior to February 6, 1905, the through rates from origins west of the Mississippi River were combinations over the river crossings, the divisions to the eastern carriers beyond Chicago being prorates of the eastern factors. Prior to February 1, 1905, the through rates from the Illinois origins via Chicago were made on combinations over that gateway. On those respective dates, from origins west of the river, the prorates beyond Chicago were canceled, and a proportional rate of 17.5 cents, the same as the local rate, established in lieu thereof, and from the Illinois origins, through one-factor rates were established via Chicago made the usual group percentages and in some instances arbitraries over Chicago-New York, resulting in divisions or transit balances beyond Chicago varying with the Illinois origin. This basis for through one-factor rates and divisions from the Illinois origins was unsatisfactory to the participating carriers, as well as the trade, and on May 1, 1907, was superseded by the specific basis, with a minimum inbound specific of 4.5 cents and a uniform outbound specific of 15 cents (later increased to 15.5 cents), or a minimum through rate of 19.5 cents, which was also established as the local rate from Chicago to comply with the fourth section. The 17.5-cent proportional on grain originating west of the river continued in effect until May 1, 1908, when it was reduced to 16 cents on wheat and corn, and 17
28 cents on oats, rye, and barley. On February 1, 1910, the latter was reduced, and the eastern specific or division on Illinois traffic was increased, to 16 cents, pursuant to an agreement between respondents and the trade, resulting in reductions and increases in the through rates from the west and Illinois, respectively, of like amount, and for the first time in uniformity in the proportionals or divisions beyond Chicago irrespective of origin. To trunk-line and New England territories, the present local rates and uniform proportionals or specifics beyond Chicago, averaging 32.5 and 24 cents, respectively, represent the 19.5 and 16-cent

figures, as modified by the subsequent general rate changes and as reduced 5.5 cents on July 1, 1934.

The service under the inbound rail rates to the gateways includes switching to the train at origin, the privilege of intermediate transit stops, not exceeding three, and terminal service at the gateway. The through rates apply whether the traffic moves in continuous through transportation in which case interchange is the only service performed at the junction, or under the governing transit provisions where it is stopped at the gateway or other intermediate point for marketing or processing. In the latter event, the outbound service generally consists of concentrated movements in large lots of several cars at a time out of terminal elevators. The local rates from the country origins apply to traffic which is picked up a single car at a time. However, a concentrated movement from a large terminal does not necessarily reduce costs. This is particularly true "in an area as congested as the Chicago switching district which presents a complicated network of railway lines probably not equaled in any other section of the country." Switching Rates in Chicago District, 177 I. C. C. 669, 711.

From the gateways, grain products to trunk-line and New
29 England territories take 0.5 cent over grain, and export traffic to the north Atlantic ports takes 8.5 cents under the domestic rates. In this proceeding the rates to trunk-line and New England territories are by far the more important, as marketers and processors in central territory can and do transit under such rates. Local disposition in central territory, at least so far as Illinois origins are concerned, is largely taken care of by the joint rates above referred to.

In connection with the ex-rail proportionals, a so-called fourth-section rule applies as follows:[2]

"In no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom."

To trunk-line and New England territories, the effect of this rule, insofar as the shipper is concerned, is to limit the application of the outbound proportional rate to traffic on which a minimum inbound rail rate of 8.5 cents was paid. The local and through rates under the all-rail structure thus reflect a consistent grading from east to west, the local and through rates from the intermediate points being lower than the corresponding rates from the more distant points over the direct routes in strict conformity with section 4. The only exceptions to this are certain departures

[2] In some instances this rule contains the words "via rail."

caused by the differing level of the proportional rates to central territory. As an extreme example, to Cleveland, Ohio, the through rate from Low Moor, Iowa, is 29.5 cents composed of the inbound rate of 14 cents plus the Trans-Mississippi proportional of 15.5 cents beyond, while the through rate from Clinton, Iowa, an intermediate point on the Mississippi River, is 33 cents composed of the inbound rate of 14 cents plus the Illinois
30 proportional of 19 cents beyond. In this connection, it should be noted that, on the average, the through rates from Illinois territory are on a lower level than the rates from origins west of the river as shown by appendix A, tables III and IV. Owing to their method of construction and the considerable grouping of origins and destinations, the through rates on this traffic do not conform to any particular distance scale. However, the average level of the through rates and the local rates in w. t. l. and central territories in general closely approximates the so-called w. t. l. scale. See also Tex-O-Kan Flour Mills Co. v. Abilene & S. Ry. Co., 255 I. C. C. 5, 22.

The outbound balances of one-factor rates under any scale which employs diminishing progression will, of course, become less as the inbound and through hauls increase. Thus appendix A, tables III and IV, show that to trunk-line and New England territories, the outbound balances or increments for the distances beyond Chicago under the w. t. l. scale are 30.5 cents from Morris, with the shortest inbound haul of 59 miles, 29.5 cents from Seneca, 69 miles, 28 cents from the other Illinois origins 82 to 250 miles, 26 cents from Iowa and Missouri, 337 and 382 miles, 26 cents from Kansas City, 436 miles, 25 cents from Minnesota and Nebraska, 483 and 630 miles, 24 cents from Kansas and South Dakota, 660 and 714 miles, and 23 cents from Colorado, with the longest inbound haul of 950 miles. These balances average about 28.5 cents from the Illinois origins and 25 cents from the seven western States, while the average uniform proportional or specific applied by respondents from Chicago on traffic from all of these origins is 24 cents on grain and 24.5 cents on grain products. Combined with the inbound rail rates, these result in through all-rail rates lower than the scale where the inbound distances are shortest and about on the scale where the inbound distances are
31 longest. Thus, under the all-rail adjustment, the through rates and eastern factors thereof on grain from these barge origins are substantially lower than they would be under an adjustment from all rail origins west of Chicago of the same average level but made on a distance scale where the outbound balances or proportionals would vary inversely with the length of the inbound and through hauls.

So far as the rail carriers are concerned, the grain originates at numerous so-called country grain elevators located throughout the origin territory requiring an inbound truck haul from the farms ranging from only a few yards to about ten miles, with a truck charge or cost ranging from 0.9 to 1.8 cents. The all-rail traffic requires only one intermediary between the farmer and the dealer at the primary market or gateway, namely, the country elevator operator, whose average margin is about 4.4 cents. This margin and the inbound truck cost is incurred on all of the all-rail traffic. Where the traffic is stopped in transit, there are additional charges for elevation and dealer's margin, such charges at Chicago being 1.6 cents and 2.25 cents, respectively. The net price to the farmer on grain shipped to the Chicago market is usually determined by deducting the inbound truck cost, rail rate and the country elevator margin from the Chicago price.

From certain origins in northern Illinois and northeastern Indiana to the Illinois portion of the Chicago switching district so-called lake local rates from 3 to 4.5 cents lower than the interstate local rates have been voluntarily established by the inbound rail carriers to meet truck and water competition. The inbound tariffs specifically provide that these lake local rates shall not engage the outbound proportional rates. The lake locals are in most instances lower than 8.5 cents as, for example, from Morris, Seneca, and Ottawa, and in such instances would not engage the
32 proportional rates to trunk-line and New England territories under the above-quoted fourth-section rule, even in the absence of the inbound provision. They are used in connection with through interstate traffic only by the payment of an additional amount sufficient to bring the total up to the through interstate rate. Grain backed by lake local billing, as the name implies, may be shipped out of Chicago by lake during the period of open navigation from about May 1 to November 1. Such grain may also be shipped to local consumers in the Illinois portion of the Chicago district, without extra charge, or shipped beyond in the form of grain or grain products to consumers in central territory on payment of the balances of the joint rates above referred to. Up to the limits of the demand for these purposes, the dealers will normally accept such grain at Chicago without discount, except toward the close of the navigation season when the discount is generally 0.5 cent per bushel or 0.9 cent per 100 pounds under the Chicago price. From origins taking lake local rates, the traffic to Chicago is confined to rail movements under those rates or to movements by truck and barge. In other words, at such origins, the only buying competition, so far as Chicago dealers are concerned, is between the lake local traffic on the one hand, and the

truck-barge traffic, on the other. However, Chicago encounters competition at the Illinois origins from the all-rail and barge-rail routes to the South, most of the Illinois grain adjacent to the Waterway south of La Salle and all of it south of Naples being obtained by markets which lie towards the south.

The all-rail adjustment by providing for proportionals or outbound balances from the gateways, fixed so far as practicable at a uniform figure regardless of origin, gives the merchants and processors at such points the benefits of transit and at the same time assists them in maintaining a common price, thus facilitating hedging and other market operations. The all-rail traffic
33 consists of all kinds of grain and grain products moving for all distances, long and short, over both direct and circuitous routes, in both continuous through transportation and where stopped in transit at the gateways or other intermediate points. It moves in boxcars with an average loading of about 50 tons on grain and a somewhat lighter loading on grain products. The present proportionals can be and are maintained in connection with the all-rail traffic and at the same time farmers and all others concerned accorded local and through rates for rail transportation aligned with each other.

THE LAKE-RAIL ADJUSTMENT

On lake-rail grain to official territory there are no joint rates whatsoever. Grain is transported by the lake carriers as a bulk commodity and the rates thereon are not subject to our jurisdiction. See section 303 (b) (c) of the Act. The normal inbound lake rate to Chicago from the principal origin ports at the head of the lakes, namely, Port Arthur and Port William, Canada, 686 miles, and Duluth, Minn., 808 miles, and from the head of the lakes and Chicago to the Lake Erie ports, is generally about 5 cents. On ex-lake traffic from Chicago, proportionals apply and have applied for many years to central territory the same as the ex-rail Northwest proportionals and to trunk-line and New England territories the same as the uniform ex-rail proportionals or specifics. Thus to trunk-line and New England territories the lake-rail combination via Chicago averages about 29 cents or 3.5 cents lower than the local rates from Chicago. The above-quoted fourth-section rule does not apply in connection with the lake-rail traffic. However, grain moving from the head of the lakes requires a substantial inbound haul by rail, and consequently the rail-lake-rail combinations are considerably higher than the local rates from Chicago.

34 The ex-lake proportionals to trunk-line and New England territories from Chicago are somewhat lower in terms

of first class, than those from the Lake Erie and Hudson River ports, as appears from the following table:

From—	Distance	Average ex-lake rate	Relation to first class
	Miles	*Cents*	*Percent*
Chicago, Ill	771	24.0	15.8
Buffalo, N. Y	387	17.7	16.5
Oswego, N. Y	332	16.3	16.8
Albany, N. Y	291	16.7	17.6

With approximately the same inbound lake rates, the lake-rail combinations via Chicago are much higher than via the other ports. Lake-rail grain from the Northwest to trunk-line and New England territories does not have to move via Chicago. Insofar as the lake grain is concerned, Chicago is primarily an outbound port, its inbound lake shipments being relatively small even in normal times. Even this small volume is attracted to Chicago under its present ex-lake proportionals only because dealers there can use grain backed by lake billing without discount in their marketing and hedging operations, and as such proportionals apply to and through points in central territory, dealers and processors at those points may ship their grain or products at the outbound balance of the proportionals to trunk-line and New England territories.

Unlike the all-rail traffic, the lake-rail traffic following the water courses moves only over circuitous routes, requires transfer of lading, and requires a full-origin terminal service when it leaves the interchange port. In other words, it never moves in continuous through transportation. The inbound-lake movement consists chiefly of wheat moving for relatively long distances. The
35. rail-lake-rail combinations are in substantial conformity with fourth-section principles.

To trunk-line and New England territories, the ex-lake rates from Buffalo, averaging 17.7 cents or 16.5 percent of first class, apply not only on lake traffic from the Northwest but also on barge-lake traffic moving via Chicago. The proposed schedules would make no change in the rates from Buffalo but would increase the ex-barge rates from Chicago to an average of 32.5 cents or 21.4 percent of first class. This would create an unjustified disparity which will be avoided by the proportionals herein prescribed on the ex-barge traffic from Chicago averaging 27 cents or about 17 percent of first class.

THE BARGE-RAIL ADJUSTMENT

On barge-rail grain to official territory there are likewise no joint rates whatsoever. The Federal Barge Line serving Kansas City and the Mechling Barge Line serving the Illinois origins are common carriers and their port-to-port rates are on file with us. Such rates are subject to our jurisdiction except those of Mechling in instances where not more than three kinds of grain are transported in a given tow. However, Mechling has found it impracticable to maintain different rates on the exempt and non-exempt traffic. As appears from Appendix A, Tables IV and V, the barge rates on grain to Chicago are from 7.5 to 9.25 cents lower than the interstate local rates from the Illinois origins and 15.5 and 6.5 cents lower than the rail local and proportional rates, respectively, from Kansas City. They are subject to minima of 200 tons on oats, and 350 tons on other grain from the Illinois origins, and 1,000 tons from Kansas City. The rate on grain products from Kansas City is subject to the usual carload minimum and includes transfer to railroad cars at Chicago. On grain, the barge
36 carriers perform very little terminal service, such service consisting merely of placing the empty barge under the marine leg of the elevator at the river origin and the loaded barge under the marine leg of the terminal elevator at the gateway. Federal has a terminal at Chicago where it can transfer the products to cars. It can transfer grain from barge to cars at this terminal by means of a clam-shell, but is never called upon to do so. Mechling handles bulk grain only and does not own or operate a terminal or other transfer facility at Chicago. Thus, the barge service under the grain rates consists solely of towing the loaded barge from point of loading to point of unloading. The barge rates yield fair returns to the barge carriers and for the purpose of this proceeding may be accepted as reasonable.

As early as 1886 there was an inbound movement of grain to Chicago by the old Illinois-Michigan Canal. That movement continued until about 1907, when the barge service was discontinued until restored in 1933. Protestant-petitioners assert that from 1886 to 1907 ex-barge grain from Illinois was on the same basis as Illinois ex-rail grain but as all-rail grain from Illinois to the East, as seen above, moved on combinations of locals prior to 1905 and one-factor rates on a non-specific plan from 1905 to 1907, the significance of this assertion is not apparent. From 1933 to the present time, the ex-barge proportionals have been on a parity with the ex-lake proportionals and certain of the ex-rail proportionals or specifics.

To trunk-line and New England territories, the ex-barge proportionals are the same as the uniform ex-rail proportionals or

specifics. To central territory, the ex-barge rates from the Illinois origins are the same as the Northwest proportionals, and from Kansas City the same as the Trans-Mississippi proportionals.

The barge-rail combinations are not made subject to the
37 above-quoted fourth-section rule and from Illinois are generally far below the local rates from Chicago and also lower than the local rates from numerous intermediate origins in central territory, constituting numerous and extreme departures from the long-and-short-haul provisions of section 4 of the Interstate Commerce Act. For example, from Morris, they are lower than the local rates on domestic grain to trunk-line and New England territories from all central territory origins west of a line running south from Amadore, Mich., through Oxford, Mich., just west of Hudson, Mich., thence east of the Ohio-Indiana State line south to a point just west of Cincinnati, Ohio. They are also lower than the local rates on export grain from all central territory origins west of a line from Erie, Pa., south through Meadville, thence via Johnsonburg, to Altoona, Pa. The barge-rail rates are far below the all-rail rates from the same and other Illinois origins. This is an inequitable situation giving rise to requests for reductions in the all-rail rates from the Illinois and central territory origins and it is difficult to see, with such extreme disparities, how such requests could properly be denied. As shown by Appendix B, Table I, there is a substantial production of corn in central territory. While the farmers therein did not appear at the hearing to show that they were hurt by this situation, such evidence was adduced by others in the same relative position, namely, the associations of private and farmer co-operative elevator companies at numerous rail origins in Illinois. This is what is meant by the statement in the prior report that the present ex-barge proportionals from Chicago jeopardize the all-rail rate structure. This demonstrates the inconsistency of the position of protestant-petitioners, namely, that the ex-barge traffic be accorded the same rates but not subjected to the same rule as the ex-rail traffic. This fourth-section situation does not exist
38 in connection with the barge-rail rates from Kansas City, which to trunk-line and New England territories average 33.5 cents on grain and 35.5 cents on the products, composed of 9.5 and 11 cents inbound, and 24 and 24.5 cents outbound, or 1 and 2.5 cents, respectively, higher than the local rates from Chicago. Like the lake traffic from the Northwest, the barge traffic from Kansas City is usually preceded by a rail haul.

The barge movement from the Illinois origins consists chiefly of corn moving for relatively short distances. The barge movement from Kansas City consists chiefly of wheat moving for relatively long distances, but very little has moved to Chicago

during recent years on account of scarcity of barges and channel difficulties.

Inbound to Chicago, as compared with the direct rail hauls, the barge hauls are slightly longer from the Illinois origins and substantially longer from Kansas City. From the Illinois barge origins the all-rail routes via Chicago to New York, as illustrative of trunk-line and New England territories are from 3.2 to 9.1 percent longer than the direct all-rail routes. Thus, to New York the rail haul from Chicago (890 miles) in connection with the barge-rail rates, as compared with the haul over the direct all-rail routes, is 30 to 155 miles shorter, which represents the net saving in direct rail-transportation resulting from the substitution of barge hauls, ranging from 64 to 262 miles. To the Ohio River crossings and other destinations in the southern portion of central territory the circuity via Chicago is substantially greater and the net saving in direct rail transportation accomplished by the barge service is correspondingly less. It is true that from origins in northwestern Illinois (north and west of the Chicago-Peoria-Fort Madison, Iowa, line), the all-rail grain moves to northern central and trunk-line and New England territories principally via Chicago or Chicago junctions, which may be said to be reasonably direct hauls. But from the many Illinois origins south and east of that line, the direct routes are not via Chicago. In this connection, it should be noted that, on grain moving from these and central territory origins over their direct single-line routes, respondents obtain the entire amount of the through rates or of local rates which harmonize therewith. Whether the direct route be single or joint, the line-haul service which they perform beyond the Chicago junctions on traffic to the southern portion of central territory is substantially less than the service they perform out of Chicago.

39.

Like the lake-rail traffic, the barge-rail traffic requires transfer of lading and a full origin terminal service at the interchange port. In other words, it never moves in continuous through transportation. Protestant-petitioners contend that the fact that the barge-rail traffic must always be stopped at the gateways does not mean that the outbound rail carrier performs any greater transit service in the aggregate on the ex-barge than on the ex-rail grain. They refer to Export Grain, C. F. A. Territory to North Atlantic Ports, 235 I. C. C. 655, in which division 3 found that the amount of export grain moving through Chicago without transit was negligible and point out that on domestic grain the stop at Chicago may simply be in lieu of a stop at Indianapolis or other terminal market east thereof. The western factors of the through rail rates include not to exceed three transit services without additional charge and to the extent that the all-rail ship-

ments receive transit on the inbound movements to the gateways there is less demand on the eastern carriers to perform transit service thereon. This record shows that there is a very substantial volume of domestic grain and grain products moving from points west of the gateways to the East without transit at the gateways or points east thereof. That such through movements by rail are substantial is shown by the statistics set forth in Appendix B hereto coupled with the fact that official territory consumes as grain or products about 156,000,000 more bushels annually than it produces. Moreover, all-rail grain may be, and frequently is, marketed and processed at Chicago under one transit operation, which avoids the necessity for processing at an intermediate point east thereof. Transit is not available under the inbound barge rates. Barge-rail grain is marketed but not processed at Chicago. To be processed before final destination it must be transited at some point beyond Chicago. It follows that respondents are called upon to perform more transit service, on the average, on the ex-barge than on the ex-rail traffic.

A trimming expense of 0.7 cent per 100 pounds is incurred in connection with the barge-rail grain. There are, of course, relatively few origin elevators for the barge grain, located on the Waterway only. The margin for these elevators at the Illinois barge origins averages about 2.68 cents. In the case of one of the protestants, operating Waterway elevators at Morris and Seneca, Ill., this represents a net profit of 1.34 cents, which is returned in the form of dividends to its stockholders. The stockholders are 14 private and 15 farmer cooperative elevator companies located within 40 miles of Morris. Certain of the other protestants, on account of competition, have been forced to forego profits from their elevators at the Waterway origins, which are maintained as auxiliaries of their Chicago houses.

Grain is trucked to the Waterway elevators at the Illinois origins from farms as far distant as 77 miles, the relative proportions for the various distances being set forth in Appendix B, Table IV, showing the total of the truck, barge, and trimming charges, as compared with the rail interstate and lake local rates. In this comparison, no allowances are included for the inbound truck charges to the elevators in connection with the rail traffic. Although the barge grain from the Illinois origins does not move through the country rail elevators, it is generally purchased through the operators thereof, who are allowed the same margin as on the rail grain, namely, 4.4 cents. Such operators guarantee the delivery of the grain and also assume all risks of liens thereon. It would be difficult, if not impossible, for a river-bank elevator to deal directly with individual farmers if any large territory were served, and buying from such operators cuts telephone costs. Such

operators also see to it that there is an orderly delivery of grain to the river-bank elevator so that the latter will not become congested. The elevator charges and dealer's margin at Chicago are the same as on transit rail grain, namely, 1.6 and 2.25 cents, respectively.

The proportionals from Chicago on the ex-barge grain being substantially the same as on ex-rail and ex-lake grain, the Chicago dealers are able to maintain the Chicago price without discount on grain backed by barge billing and to utilize such grain in their hedging operations. The net price to the Illinois farmer selling his grain for transportation by barge to the Chicago market is determined by the Chicago price, less the barge rate and the applicable costs and margins peculiar to the barge traffic. Where the deductions are less on the barge than on the rail traffic the net price to the farmer is correspondingly greater, the difference diminishing as distance from the Waterway increases until finally it disappears altogether. On September 15, 1942, the river elevator price of corn per bushel at Morris and LaSalle (with rates to Chicago of 2 and 2.75 cents by barge and 9.5 and 12 cents by rail) was 81 cents or 3 and 4 cents higher than the rail elevator
42 price at Plano and Ashkum, Ill., respectively, with the same rail rates to Chicago. On September 15, 1943, the river elevator price at Morris and Havana (with barge rates of 2 and 4.25 cents and rail rates of 9.5 and 12 cents) was 105 and 102.4 cents, or 5 and 4.25 cents higher than the rail elevator price at Plano and Gibson City, Ill., respectively, with the same rail rates to Chicago. The rail rates just referred to are the interstate rates. No benefit from the barge transportation accrues to the farmers depending on the Kansas City market, as the price they receive based on that market is the same irrespective of whether the grain moves out-bound by barge or rail.

From Kansas City to the East, barge-rail grain, as compared with direct shipments of all-rail grain, requires an additional expense at Chicago of 3.25 cents for trimming, weighing, and inspection. There is only one river elevator at Kansas City. Barge shipments from rail elevators there must bear additional switching charges of $6.93 or $8.91 per car, and a transfer charge from car to barge of 39 cents per net ton. At Chicago, the elevators are generally served by both rail and water, but local processors there can obtain rail delivery of barge-grain only by the payment of a switching charge ranging from 3.25 to 4.5 cents per 100 pounds.

The primary interest of the Illinois farmer having access to the Waterways is in the greater net price above referred to. The barge lines and the Waterway elevator operators and dealers are primarily concerned with the volume of traffic moving through their facilities.

Under the proposed schedules, the barge-rail combination on grain from Kansas City to the East, processed into flour at Cleveland, would average 42.5 cents, composed of the 9.5-cent barge rate to Chicago, plus the average local rate beyond of 33 cents on grain products, while the barge-rail combination on flour milled at Kansas City would continue at an average of 35.5 cents, composed of the 11-cent barge rate on grain products to Chicago, plus the 24.5-cent rate on the products beyond. This creates an unjustified disparity which will likewise be avoided by the proportional rates prescribed herein resulting in barge-rail combinations on this Cleveland and Kansas City traffic averaging 37 and 38.5 cents, respectively.

GENERAL DISCUSSION AND CONCLUSIONS

The principal questions presented on further hearing are whether the ex-barge traffic from Chicago is entitled to proportionals lower than the local rates, and if so, how much lower.

To trunk-line and New England territories, protestant-petitioners contend that as the ex-rail and ex-lake proportionals or specifics are made uniformly 8.5 cents under the local rates, the ex-barge traffic is likewise entitled to uniform proportionals, regardless of origin, made 8.5 cents under the local rates or the same in amount as the ex-rail and ex-lake proportionals or specifics.

To central territory ex-barge grain from Illinois takes the highest of the three sets of proportionals. Protestants made no complaint against this at the original hearing, but on further hearing, the Illinois proportionals are proposed by certain protestant-petitioners and the Trans-Mississippi proportionals by others, for application on ex-barge grain from Illinois to this territory. Most of them propose that the Trans-Mississippi proportionals be continued on ex-barge traffic from Kansas City. But, as we have seen, to central territory, the ex-rail proportionals from Chicago being adjusted to equalize the various markets and routes, do not bear any consistent relation to the local rates therefrom and obviously are not designed to fit the barge-rail traffic via Chicago.

The Department and War Food Administrator propose ex-barge proportionals to central territory bearing the same percentage of first class as is borne, on the average, by the proportional rates to trunk-line and New England territories, namely, 15.8 percent. They point out that such proportionals would yield average earnings of 9.55 mills per ton mile, or substantially the same as the average yielded by all freight traffic of the western and eastern rail carriers in 1941. They also refer to the substantial increase in railway operating income for such carriers since the beginning

of World War II in 1939, and particularly since our entrance in the War in 1941. Evidence of this character is of little probative value in determining the reasonableness of the rates on a particular commodity. Grimes & Friedman v. Belt Ry. Co., 190 I. C. C. 32, 36; International Oil Co. v. Abilene & S. Ry. Co., 204 I. C. C. 783, 787.

Respondents propose ex-barge proportionals to trunk-line and New England territories one cent under the local rates, and to central territory 1.5 cents under the local rates.

Interveners contend that no justification is shown on this record for any rates on the ex-barge traffic lower than the local rates, and that therefore the prior findings should be affirmed.

Under the so-called relative service limitation, as will be shown hereinafter, the barge-rail traffic from the Illinois origins in most instances would not be entitled to joint rates lower than the combination of local rates. But that limitation was designed to cover instances where the expense of interchange between
45 the rail and water carriers would offset the lower cost of the water transportation. There would be no basis for such a limitation here for, as seen above, the barge service effects a saving in terminal service in connection with the inbound haul. Moreover, respondents themselves now concede that the ex-barge traffic is entitled to something lower than the local rates.

Under the proposed schedules the rates on the ex-barge traffic made on the full local basis, much higher than the ex-rail and ex-lake proportionals or specifics, would result in barge-rail combinations higher in some instances than the all-rail rates from the same origins. Under such a basis Chicago dealers could not use grain backed by barge billing in their marketing and hedging operations without a substantial discount in price. The record as amplified on further hearing shows that the proposed schedules would lessen and possibly destroy the barge-rail traffic to trunk-line and New England territories and also largely to central territory in view of the lake local, joint rate, transit, and discount situations above referred to. Whether they would restore the traffic to the all-rail routes is problematical. They might have the effect of diverting the grain from these northern Illinois origins to barge movements to the South. In any event, under the proposed schedules, the barge-rail traffic via Chicago would not have a fair opportunity to move in competition with the all-rail and lake-rail traffic.

We conclude that the ex-barge traffic is entitled to proportionals lower than the local rates.

In support of their contention that the ex-barge traffic is entitled to proportionals no higher than the ex-rail and ex-lake proportionals or specifics protestant-petitioners cite, among others, the five cases from which they quote the following paragraphs,

and which we now discuss. In N. Y. & N. Ry. Co. v. N. Y. & N. E. R. R. Co., 4 I. C. C. 702, we said:

"When, therefore, the statute declares that there shall be no discrimination in rates and charges between connecting lines, it can only mean that no difference or distinction shall be made in rates that shall coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business that under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor. Unless this effect is given to the statute it is only a meaningless enactment."

In Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 392, we said:

"If carriers are permitted to apply higher rates for the same service on traffic routed over connecting water lines than on traffic via their all-rail connections, they will be in a position to destroy all water competition and to deprive shippers of the advantage of their location upon navigable waters."

The latter statement was quoted, with approval, by Division 3 in Restriction on Proportional Rates, 161 I. C. C. 113, and Ex-River Grain and Grain Products to Mississippi Valley, 177 I. C. C. 206, and by Division 4 in Raw Sugar, New Orleans to Gramercy and Reserve, La., 206 I. C. C. 231.

To the extent that the above quotations mean that proportional rates should be so adjusted as to recognize the inherent advantages of each form of transportation, be non-destructive of either, and not unjustly discriminate as between the rail and water shippers and carriers we believe them to constitute a sound statement of principles. But if they are to be construed as meaning that ex-water proportionals must be the same as ex-rail proportionals, regardless of the differences in circumstances and conditions surrounding the all-rail and water-rail transportation, they are contrary, in that respect, to the findings of Division 3 in Ex-
47 River Grain from St. Louis to the South, 203 I. C. C. 385, in which petitions for reopening were denied by us, and were expressly overruled by the findings of the entire Commission and the Supreme Court in the instant proceeding.

Although it is well settled that when the lawfulness of proportional rates is in issue they are subject to the same criteria as other separately established rates, it is equally well settled that where such proportional rates are a part of a closely integrated rate structure, as in the case of grain, careful consideration must also be given to the relation of such proportional rates to the through rates and the other components thereof. Baltimore Chamber of Commerce v. B. & O. R. R. Co., 22 I. C. C. 596, 602; Fraser-Smith Co. v. Grand Trunk W. Ry., 185 I. C. C. 57, 62;

Grain and Grain Products, supra; Nebraska-Colorado Grain Producers Assn. v. C. B. & Q. R. Co., 243 I. C. C. 309, 313.

In our prior report herein, 248 I. C. C. 307, 311, we said:

"As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are, of course, determined by the measure of the inbound and through rates, and properly may vary according to the relative length and nature of the inbound and through service."

In upholding our order, the Supreme Court, among other things, said:

"Nowhere in the Act or in its legislative history is there any suggestion that from the mere fact that grain moving from beyond Chicago to New York travels by barge for the 60-mile leg of its journey to Chicago—less than one percent [sic] of the total haul—it shall as matter of law be entitled to a rate from beyond Chicago to the seaboard less than that from the Pennsylvania line to the seaboard.

* * * * * *

Nothing in the Interstate Commerce Act, as amended by
48 the Transportation Act of 1940, or in the statements of even the most ardent Congressional champions of water transportation, affords the slightest warrant for a decision that the Commission must treat as legally identical such widely disparate factual situations.

* * * * * *

"The policy provisions of the Transportation Act of 1940, as well as the specific statutory provisions, provide only standards of considerable generality and some overlapping. It requires administration to "recognize and preserve the inherent advantages of each"—rail, water, and motor transport. It also seeks 'sound economic conditions' for all kinds of transportation. For more than a year after the enactment of this Act, and until after the Commission had finally disposed of the case, appellees showed no disposition to make proposals or to develop a record upon the basis of which the Commission might prescribe rates in view of their particular circumstances and under the provisions of the Act designed with reference to them. Instead they relied upon the erroneous view that they were by law entitled to the fortuitous and in many respects unlawful benefits of the existing rate structure."

Where, as here, ex-rail and ex-lake proportionals or specifics reflect average circumstances and conditions surrounding the all-rail and lake-rail transportation which differ from those affecting the barge-rail transportation, we conclude that ex-barge proportionals

may properly vary from the ex-rail and ex-lake proportionals or specifics to the extent warranted by such differences.

The principal differences as shown by this record and described above may be summarized as follows:

1. On the average, as compared with the ex-barge grain, the movement under the ex-rail proportionals and specifics requires less terminal service at the gateway of junction, less transit service at intermediate points in official territory, and less line-haul service to the southern portion of central territory.

49 2. The inbound rail hauls of all of the traffic which engages the ex-rail proportionals are substantially longer, on the average, than the inbound barge hauls.

3. The rate-making circumstances characteristic of the all-rail traffic, but not of the barge-rail traffic here considered, include:

(a) The ex-rail proportionals or specifics, as parts of the through all-rail rates, provide to each destination on all-rail traffic from west of the gateways an average outbound factor which is a component part of many through rates of different amounts, which vary with the length of the inbound hauls and the western factors applicable thereto.

(b) The ex-rail proportionals or specifics (1) are made subject to a fourth-section rule which in effect provides that to trunk-line and New England territories they shall apply only where the inbound rate is 8.5 cents or higher, and (2) to all official territory destinations are adjusted to equalize the all-rail rates by the various routes and gateways.

(c) The ex-rail proportionals or specifics, combined with the inbound interstate rates or specifics, result in through all-rail rates to official territory which harmonize with each other and with the local rates in that territory.

4. Lake grain from the Northwest consists chiefly of wheat which has a relatively long water haul inbound and is usually preceded by an inbound rail haul. The rail-lake-rail combinations, in general, conform to the principles which underlie section 4. In these respects lake grain is like barge grain from Kansas City but unlike barge grain from Illinois. The trunk-line and New England territories, the lake-rail grain differs from all of the barge-rail grain moving through Chicago in that the lake-rail grain can and generally does by-pass that gateway entirely.

The uniform ex-rail proportionals or specifics here considered have the same characteristics and function as the inter-
50 market proportionals previous referred to in that both reflect an average of what would otherwise be balances of through all-rail rates, are components of the through all-rail rates, and have been recognized by us as such. Protestant-petitioners concede that they would be inappropriate for the ex-barge traffic.

if, like the intermarket proportionals, they had been prescribed by us instead of being voluntarily established by the respondent carriers. But, irrespective of how they were actually determined, it is their essential nature and function which is controlling here.

In determining how much lower the ex-barge proportionals should be than the local rates and how much higher than the ex-rail and ex-lake proportionals or specifics, consideration must be given to their effect on the movement of the traffic. The present combinations on the barge-rail traffic being so much lower than the all-rail rates from the same and other origins have diverted and will continue to divert a substantial portion of the traffic to the barge-rail routes via Chicago from the all-rail routes, including those through Indianapolis and other markets. This is due, in part, to the level of the barge rates. However, it is also partly due to the level of the present ex-barge proportionals. Respondents here are interested in the measure of those proportionals as outbound carriers from the gateways and as participating carriers over the other all-rail routes. Several of them are also inbound carriers, like the western rail carriers, directly competing with the barge lines. As to the ex-lake rates from Chicago, that these do not adversely affect those interested in the barge-rail traffic via Chicago is shown by the fact that if such ex-lake rates were increased, lake grain from the Northwest would continue to flow to the Lake Erie and Hudson River ports and those interested in the barge-rail traffic via Chicago would be no better off than before.

51 Commercial witnesses for protestant-petitioners estimated that differences ex-barge over corresponding ex-rail proportionals would curtail the barge traffic from Illinois as follows: 1 cent from 15 to 33⅓ percent; 2 cents from 45 to 66 percent; 3 cents, 80 percent; and 4 cents, 100 percent. The basis for this estimate is not clear. With the present seller's market it is admitted that grain can and does move very largely regardless of the rates, while in normal times Chicago encounters competition at the Illinois barge origins from the southern markets and at least two-thirds of the barge grain moving to Chicago moves outward by lake. Under the proportionals approved herein on the ex-barge traffic, it may be necessary to accord grain backed by barge billing some discount under the Chicago price, but certainly there is no reason why such discount should be as great as the increases resulting from such proportionals.

If the rates on the ex-barge traffic are adjusted "in view of its particular circumstances and under the provisions of the Act designed with reference thereto," the barge-rail traffic will have a fair opportunity to move in competition with the lake-rail and all-rail traffics, thus preserving the inherent advantage of barge

transportation to the adjacent farm community and all others concerned, without any adverse effect on the wartime stabilization program or the effective use of the waterway.

In prior proceedings we have prescribed through barge-rail rates based on the so-called Ex Parte 96 formula, or modifications thereof, using percentage differentials under the local rail rates between the barge ports, or on a constructive distance basis, using one rail mile as the equivalent of from 2.25 to 3 water miles, depending on the circumstances and conditions surrounding the movement of the particular traffic. Through Routes and Joint Rates, 153 I. C. C. 129, 156 I. C. C. 141, 161 I. C. C. 207, 163 I. C. C. 716, 167 I. C. C. 385, 172 I. C. C. 525, 174 I. C. C. 477, 181 I. C. C. 675, 192 I. C. C. 173, 192 I. C. C. 663, Sugar from
52 Louisiana to Arkansas, 167 I. C. C. 710, Application of Mississippi Valley B. L. Co., 167 I. C. C. 41, 171 I. C. C. 37, 178 I. C. C. 224, 182 I. C. C. 512, Application of American B. L. Co., 182 I. C. C. 521, Cotton and Cotton Linters from South and Southwest, 183 I. C. C. 33, Application of Inland Navigation Co., 218 I. C. C. 393.

Such through barge-rail rates are subject to a fourth-section rule, namely, that the through barge-rail rate shall not be less than the local rate from the interchange port, and to a relative service limitation, namely, that no through barge-rail route need be established where the shortest rail distance from the port of interchange to the rail destination exceeds three-fourths of the shortest rail distance from the barge origin to that destination. On the principal traffic here considered, from Illinois to trunk-line—New England territory, the shortest rail distance from Chicago exceeds three-fourths of the shortest rail distance from each of the Illinois barge origins. If this relative service limitation were imposed here this ex-barge traffic from Illinois would not be entitled to proportionals lower than the local rates by any amount. Under the circumstances we think it should be relieved entirely from the relative service limitation.

If the ex-barge traffic from Illinois were made subject to the fourth-section rule but not to that limitation, it would be entitled to differentials under the local rates not exceeding the amount of the inbound barge rates, namely, differentials ranging from 2 cents on grain originating at Morris to 5 cents on grain originating at
Naples. Under section 6 (b)[3] of the Transportation Act,
53 1940, respondents are not required to increase their present

[3] This section appears on page 24 of our compilation of the Interstate Commerce Act and related sections of other acts, revised to April 1, 1941, and at 54 Stat. L. 904. The provision of that section referred to reads as follows:

(b) In the case of a carrier heretofore subject to the provisions of paragraph (1) of section 4 of the Interstate Commerce Act, as amended, no rate, fare, or charge lawfully in effect at the time of the enactment of this Act shall be required to be changed by reason of the amendments made to such paragraph by subsection (a) of this section.

ex-barge proportionals to bring the barge-rail combinations in harmony with fourth-section principles. But this section cannot be construed as precluding respondents from increasing those proportionals to bring the barge-rail combinations more nearly into conformity with section 4. Since section 6(b) of the Transportation Act, 1940, protects the departures in the present adjustment it follows that it will protect any departures of lesser extent, such as those resulting from the rates approved herein.

The ex-barge traffic cannot be averaged with the ex-rail transportation and accorded the same outbound proportionals if, as the Act requires, the inherent advantage of each form of transportation is to be preserved, for to do so would not only give full effect to the lower inbound cost but, in addition, would extend to the barge-rail transportation most of the advantages of all-rail transportation. However, all of the ex-barge traffic can and should be accorded uniform proportionals reflecting average conditions surrounding barge-rail transportation, to promote its movement by meeting so far as practicable the commercial needs thereof, just as the ex-rail traffic, for similar reasons, has been accorded uniform proportionals reflecting average conditions surrounding the all-rail transportation. Protestant-petitioners ask that on the ex-barge traffic to trunk-line and New England territories we prescribe uniform proportionals regardless of origin. Under all the circumstances, such uniform ex-barge proportionals may be arrived at by averaging the balances to those territories under the w.t.l. scale from the respective barge origins, namely, 28.5 cents ex-Illinois, 26 cents ex-Kansas City considered alone, and 25 cents ex-Kansas City considering the prior rail hauls. We thus arrive at proportionals averaging 27 cents, and made uniformly 5.5 cents under the
54 local rates and 3 cents higher than the ex-rail and ex-lake proportionals or specifics. To trunk-line and New England territories the resulting barge-rail combinations will average about 5 cents less than the corresponding all-rail rates. Grading such proportionals back through central territory so as to fit the barge-rail traffic via Chicago and at the same time avoid any new fourth-section departures, we arrive at ex-barge proportionals to that territory averaging about 17 cents and ranging from 1 to 5 cents, and averaging 2.4 cents, under the local rates. To that territory the resulting barge-rail combinations will average 6.5 cents less than the all-rail combinations.

As shown in detail by Appendix A, Tables IV and V, the ex-barge proportionals prescribed herein will result in barge-rail combinations substantially lower in amount and in relation to the w.t.l. scale than the corresponding all-rail rates. The latter comparison is based on the constructive distances shown, using one rail mile as the equivalent of four water miles which is the ratio

of the present barge rates to the corresponding inbound (interstate) rail rates from the Illinois origins. This ratio and the spread or differential, barge-rail under all-rail, resulting from the basis herein prescribed, are considerably greater than those resulting from the joint barge-rail rates prescribed in the proceedings last cited, and fully reflect the contribution of this barge grain to the transportation economy as shown by the present record.

Peoria and St. Louis would, of course, be entitled, on reasonable request, to ex-barge proportionals properly aligned with those approved herein from Chicago, but the record does not contain sufficient detail for the prescription of such proportionals in this proceeding.

The Price Administrator requests, regardless of the merits
55 from a peacetime standpoint that no increases whatever be permitted in the ex-barge grain rates from Chicago until after the present war emergency, but there is no basis for granting this request, either in fact or in law.

FINDINGS

On further hearing:

1. We find that we should not prescribe joint rates on the barge-rail traffic above described.

2. We further find that reasonable and otherwise lawful proportional rates for the interstate transportation by rail of ex-barge grain, in carloads, from Chicago, Ill., to the eastern destinations considered herein, under sections 1, 2, 3 (4), 3 (4), 6 (11) (b), and 15a (2) of the Interstate Commerce Act, administered with a view to carrying out the national transportation policy, will be those made differentially under the local rail rates which are or may be hereafter concurrently maintained from Chicago, as set forth below, with the customary differentials on the products and export traffic, and which are no less favorable to the ex-barge traffic and no more favorable to the ex-rail and ex-lake traffic than is represented by the relation between such prescribed ex-barge proportionals, on the one hand, and the present ex-rail and ex-lake proportionals or specifics, on the other.

When local rail rates on grain is (cents):

13–14.
15–22.
23–24.
25–26.
27–28.
28.5 and over.

Differential, ex-barge under local rail rate, shall be (cents):

1.
2.
3.
4.
5.
5.5.

56 3. We further find that such ex-barge proportionals shall be subject to the same policing provisions as the ex-rail and ex-lake proportionals, but shall not be made subject to the fourth-section rule.

As the proposed schedules have not become effective due to the voluntary postponement by respondents of the effective date thereof, no order requiring establishment of the rates herein found lawful appears necessary at this time. An order will be entered requiring the cancellation of the proposed schedules, without prejudice to the filing of new schedules in conformity with the findings herein.

Commissioner MAHAFFIE concurs in the results.

MILLER, Commissioner, dissenting:

In my opinion we should not here prescribe proportional rail rates from Chicago for application on grain brought thereto by barge.

Under section 303 (b) of the Act we do not have jurisdiction over the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. The barge shipments here in issue are in bulk and the tow may consist of not more than three bulk commodities.

Undoubtedly, in many cases, the same shippers who forward grain to Chicago by barge carriers for shipment beyond by rail also ship grain by the same carriers to Chicago or other ports for local sale and disposition or for movement beyond by carriers other than rail. If the shipments receiving no subsequent rail transportation move to such ports in tows containing not more than three commodities in bulk, they are not subject to our jurisdiction and the barge carrier may make whatever charge it sees fit. Assuming that the barge-line rate on file with us to

57 Chicago is 8 cents per 100 pounds, there is nothing to prevent the barge line from charging, for example, a rate of only 6 cents on the traffic not under our jurisdiction and thereby accord the shipper an average rate of perhaps 7 cents on all of his traffic. A rail carrier, on the other hand, must publish and maintain its tariff rates on all grain and other traffic which it handles. If, in the illustration given, the rail rate is 10 cents, it is obvious that as long as the barge line is free to cut its average rate to the

shipper to 7 cents, or any other figure it may elect, its opportunity of obtaining the greater share of the traffic is enhanced. So long as this opportunity for rebating exists, I have much doubt whether a carrier, a part of whose grain traffic is not subject to the Act, can be considered, as to any of such traffic, a "common carrier by water subject to part III" for the purpose of here enforcing section 3 (4), 3 (1) or any of the other provisions of the Act cited in the findings of this report. Evidently, the cure for this condition is additional legislation giving us jurisdiction over such traffic.

Moreover, the report plainly indicates that on the average the rail carriers are put to a greater expense in connection with the interchange of this ex-barge grain at Chicago than is the case in the interchange of traffic delivered to Chicago by rail. Any extra expense connected with the interchange of this ex-water traffic should be borne by the barge lines. This record affords no basis for determining the amount of this extra expense. Therefore, even if we had jurisdiction over all the transportation of grain performed by these barge lines, we would still lack the evidence which is necessary to enable us to do justice between both the barge carriers and the rail lines in the prescription of rail proportional rates for application on this ex-barge grain.

58 ALLDREDGE, Commissioner, dissenting:

An error of a fundamental nature runs through the majority report. I cannot, therefore, agree with its conclusions. This error is plainly discernible when the results of the decision are examined in relation to the real issue presented by the record.

This proceedings was started by action of the eastern rail lines in an attempt to restrict their tariffs so that the eastbound proportional rates published therein on grain and grain products from Chicago would not in the future apply on such traffic when it originates along the Illinois Waterway and is brought into Chicago by barge or boat. The railroads acted in this matter entirely in their own interest. There was no shipper demand, so far as the record discloses, for any change in the proportional rates applicable on this ex-river traffic. The boat and barge competition on the Illinois Waterway, however, is the exclusive concern of the western rail lines terminating in Chicago. They are the only railroads that are competitive with boats and barges operating on this waterway. The railroads running east of Chicago, insofar as the movement of this particular traffic to its ultimate market is concerned, offer a supplementary service to the water lines as well as to the western railroads. They obtain the same rates and revenues irrespective of whether these commodities are delivered to them at Chicago by the western railroads or by boats and barges on the Illinois Waterway. If any railroads, therefore, are actually suffering from the competition of the boats and barges on this

waterway, it is the western and not the eastern railroads. Any need for revising the existing rates in issue here, if any such need exists, would spring from this one particular circumstance. In endeavoring to compose this situation, however, under the principles announced by the Supreme Court of the
59 United States in Interstate Commerce Commission v. Inland Waterways Corp., 319 U. S. 671, the majority has decided to increase the rates and revenues of the rail lines extending east from Chicago, even as far as New England—a wholly different set of carriers from those which feel the effects of the waterway competition. There is, therefore, no logical relation between cause and effect in the majority decision. The only real solution of the problem, if any solution is called for, is to establish minimum rates for the boats and barges operating on the Illinois Waterway so as to protect the western rail lines against the competition thus created. These western railroads, however, have not made out such a case on this record. The boat lines are apparently prospering under the rates which they are now charging, and there seems to be no reason for putting a floor under those rates.

If there is no justification for the increases in rates which the majority here extends to the eastern rail lines—and I do not think there is in the circumstances of this case—then those increases are unjust and unreasonable under section 1 of the act and the declared purpose of the national transportation policy under which all provisions of the act are to be administered, and should not be sanctioned.

But there is an additional restraint against the granting of such increases. Section 3 (4) of the act was clearly intended, among other things, to prevent discriminations in rates between connecting lines. It specifically includes water carriers subject to part III of the act. The boats and barges operating on the Illinois Waterway are such carriers. They are, therefore, entitled to the protection which section 3 (4) affords. I do not understand the decision of the Supreme Court in Interstate Commerce Commission v. Inland Waterways Corps., supra, to deny or even
60 to qualify that protection. That decision held, in effect, that we should look at all the circumstances and conditions surrounding the entire movement of the traffic in determining whether or not section 3 (4) has been violated. An examination of all such factors convinces me that what the rail carriers have been doing for the last dozen years with respect to these rates is about what section 3 (4) demands. The majority report will now materially change that situation. It will require higher rates to be charged east of Chicago on this ex-river traffic than will be charged on ex-rail traffic coming from the same area and on ex-

lake traffic moving into Chicago under similar conditions. There is no justification for such action. The eastern railroads have not shown a need for additional revenue or established the existence of any higher costs of consequence, terminal or otherwise, in the transportation of ex-river traffic than those incurred in the handling of ex-rail or ex-lake traffic of the same character. Since, however, this matter has come before us for review again, we might, in order to effect a more precise relation between ex-rail and ex-river grain traffic, reasonably and properly require that the ex-Illinois grain proportionals applying from Chicago to C. F. A. territory be applied also on this ex-river traffic rather than the ex-northwestern proportionals. That is the only change in the existing proportional rates maintained by the eastern rail lines that I believe the record supports.

One further complication is pointed out in the majority report in connection with violations of section 4 of the act by reason of the fact that the combinations of water and rail proportional rates on this grain traffic are lower than the local rail rates from Chicago to the same destinations. This condition exists in the present rates, and it will continue to exist, although in lesser degree, in the rates approved by the majority. The act, however, provides for relief from the operation of section 4 in
61 such circumstances if section 6 (b) of the Transportation Act of 1940 does not automatically take care of the matter. It seems entirely reasonable and proper to grant whatever relief from the rigid terms of section 4 that may be necessary to maintain the rates I have suggested.

I am authorized to state that Commissioner Lee joins in this expression.

PATTERSON, Commissioner, dissenting:

There are various features of the decision of the majority as to the propriety of which I have grave doubts, but I will confine my discussion here to the one which I regard as of controlling importance, namely, the fourth section situation.

From Morris, for instance, the barge rate to Chicago is 2 cents. The ex-barge proportional approved by the majority from Chicago to New York is 29 cents, making a through barge-rail rate of 31 cents. The local rate from Chicago is 34.5 cents. We, therefore, have a situation where on "like kind of property" the rate will be lower from a farther distant point than from a directly intermediate point, in contravention of section 4 (1) of the act. A similar result would be produced at all intermediate points east of Chicago where the local rate exceeds 31 cents.

In discussing this situation in Interstate Commerce Commission v. Inland Waterways Corporation, 319 U. S. 671, the Supreme Court said:

"To perpetuate the existing rate structure by sustaining the District Court's injunction would entail numerous and serious violations of § 4 (1).[23] Under that rate structure, ex-barge grain moved from Illinois River points to Baltimore, New York and Boston at combination rates lower than the local rates for domestic grain from all points in Central Territory west
62 of a Line running south from Bay City, Michigan, through Fort Wayne and Indianapolis, Indiana. So also did the ex-barge grain move out at combination rates lower than local export rates on grain from all points in Central Territory west of a line running southwardly and south along the Indiana-Ohio line; and lower than the local export rates on corn from all points in Central Territory west of a line between Paynesville and East Liverpool, Ohio, near the Pennsylvania line. Unlike the barge-rail rate, the all-rail rates are, as the Commission has found, in strict conformity with § 4 (1). Congress by the Transportation Act of 1940 amended § 4 (1), but nowhere in the Act or in its legislative history is there any suggestion that from the mere fact that grain moving from beyond Chicago to New York travels by barge for the 60-mile leg of its journey to Chicago—less than one percent of the total haul—it shall as matter of law be entitled to a rate from beyond Chicago to the seaboard less than that from the Pennsylvania line to the seaboard." [24]

It should be noted that the court was referring to the result of the adjustment as it exists today, under which the proportional rate on ex-barge traffic from Chicago to New York is 26 cents. Application of the 29-cent proportional approved by the majority would change the situation only in degree.

It is conceded in the report that the rates approved by the majority would contravene the fourth section, but it is indicated that this situation would be protected by section 6 (b) of the Transportation Act, 1940. Commissioner Alldredge, in his dissent, suggests that if section 6 (b) does not automatically take care of the matter, relief should be accorded under section 4 (1) of the act.

The relief provisions of section 6 (b) and 4 (1) are permissive and not mandatory. Section 6 (b) provides that a
63 change shall not be required to effect compliance with section 4 (1) in the circumstances described, and the latter section authorizes relief in special cases, upon application by the carrier. We are without authority to compel any carrier to seek or to accept fourth-section relief. Inland Waterways Corp. v. Alabama G. S. R. Co., 151 I. C. C. 126, 133; Roasted Coffee from

[23] See footnote 2, supra, for the text.
[24] Indeed, the legislative history shows that the water interests vigorously championed the long-and-short haul clause as a measure necessary to prevent ruinous competition.

Jacksonville to Southern Points, 248 I. C. C. 563, 568; Wheeler Lbr. Bridge & Supply Co. v. Missouri & A. Ry. Co., 251 I. C. C. 58, 59.

Under the findings of the majority respondents must continue the maintenance of rates which result in fourth-section departures, under relief which they have not sought and do not want, or, in the alternative, reduce the local rates from a large number of intermediate points, which rates are not here in issue and whose reasonableness is not here in question.

In a series of cases extending over a period of years the Commission has recognized sixth class (27.5 percent of first class) as a reasonable basis for the transportation of grain in official territory. The sixth-class rate from Chicago to New York is 46 cents, as compared with the local grain rate of 34.5 cents, which is 20.7 percent of the first-class rate of $1.67.

In these circumstances, I regard the alternative mentioned, namely, reduction of the intermediate rates, as theoretical rather than actual, and it is my view that, as a matter of practical fact, the majority report prevents respondents, against their will, from eliminating fourth-section departures, in contravention of the law.

APPENDIX A

RATES ON GRAIN, WITH DISTANCES

TABLE I.—*Average out-bound local and proportional rates*

From—	To central territory				To trunk line—New England	
	Local	Proportional			Local	Proportional
		T. M.	N. W.	Ill		
Chicago, Ill.						
Distance (miles)	248	248	248	248	771	771
Rate (cents)	19.4	14.1	16.1	15.7	32.5	20.0
Percent of first class	21.9	16.0	18.2	17.8	21.4	15.5
Over or under w. t. l. scale (cents)	+ 1	−4.9	−2.9	−3.3	−5.5	−14.0
Earnings:						
Ton-mile (mills)	15.64	11.36	12.98	12.66	8.43	6.22
Car-mile (cents)	78.2	56.8	64.9	63.3	42.1	31.1
Peoria, Ill.						
Distance (miles)	331	331	331	331		
Rate (cents)	22.2	16.0	17.2	16.9		20.0
Under w. t. l. scale (cents)	−.8	−7.0	−5.8	−6.1		
St. Louis, Mo.						
Distance (miles)	498	498	498	498		
Rate (cents)	28.1	18.0	18.3	18.3		28.0
Under w. t. l. scale (cents)	−1.9	−7.0	−6.7	−6.7		

[1] Based on 50 tons per car.

TABLE II.—*Local and proportional rates from Chicago, Ill., to representative destinations in official territory*

To—	Distance	Local rate	Proportional rates			
			T. M.	N. W.	Ill.	Ex-barge prescribed
	Miles	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
La Crosse, Ind	69	13	9	12	12	12
South Bend, Ind	85	13	10.5	13.5	12	12
Kentland, Ind	81	13	10.5	13.5	12	12
Oxford, Ind	102	13	10.5	13.5	12	13
Logansport, Ind	111	13	10.5	13.5	12	13
Kokomo, Ind	132	13	10.5	13.5	12	13
Terre Haute, Ind	177	13	13	14.5	12	13
Hartford, Mich	108	17	10.5	13.5	15	15
Fort Wayne, Ind	148	17	11.5	14.5	14	15
Battle Creek, Mich	156	17	11.5	14.5	15	15
Grand Rapids, Mich	177	17	13	13	15	15
Muncie, Ind	178	17	11.5	14.5	13	15
Indianapolis, Ind	181	17	11.5	14.5	12	15
Toledo, Ohio	210	17	12.5	15.5	15	15
Pontiac, Mich	263	17	14	14	15	15
Bay City, Mich	275	17	14	14	15	15
Port Huron, Mich.	315	17	16	16	15	15
Evansville, Ind	284	18	14	15.5	13	16
Lafayette, Ind	[illegible]	19	16	16	17	17
Richmond, Ind	21[illegible]	19	11.5	14.5	13	17
Reed City, Mich	230	19	16	16	17	17
Frankfort, Mich	242	20	17	17	19	18
Sandusky, Ohio	277	20	13.5	16.5	19	18
Cleveland, Ohio	342	20	15.5	18.5	19	18
Cincinnati, Ohio	283	20.5	12.5	15.5	13.5	18.5
Jeffersonville, Ind	291	20.5	14	15.5	13.5	18.5
Traverse City, Mich	282	22	18	18	19	20
Louisville, Ky	291	22	16	17.5	15	20
Provemont, Mich	303	24	20	20	20	20
Cuyleville, Ohio	321	25	14.5	17.5	19	21
Mackinaw City, Mich	391	25	20	20	22	21
Youngstown, Ohio	356	25	16.5	19.5	19	21
Portsmouth, Ohio	396	25	16.5	19.5	19	21
Pittsburgh, Pa	454	28.5	18.5	21.5	20	24
Charleston, W. Va	461	28.5	18.5	21.5	20	24
Buffalo, N. Y	498	28.5	18.5	21.5	20	24
York, Pa	729	31.5	23	23	23	26
Baltimore, Md	767	31.5	23	23	23	26
Philadelphia, Pa	814	32.5	24	24	24	27
Albany, N. Y	789	33.5	25	25	25	28
New York, N. Y	900	34.5	26	26	26	29
Boston, Mass	973	36.5	28	28	28	31

66 TABLE III.—*Factors west of, and through rail rates via, Chicago from States indicated (and comparisons with w. t. l. scale)*

From—	Factors west of Chicago							To central territory			To trunk line—New England			
	To first market		Intermarket		Total		W. t. l. scale	Distance	Through rate	W. t. l. scale	Distance	Through rate	W. t. l. scale	
													Rate	Balance [1]
	Miles	Cents	Miles	Cents	Miles	Cents	Cents	Miles	Cents	Cents	Miles	Cents	Cents	Cents
Iowa					337	20.6	23	585	34.7	31	1108	44.6	49	26
Missouri					382	22.5	24	630	36.6	33	1153	46.5	50	26
Minnesota	83	12.7	[2] 400	13	483	25.7	28	731	41.8	36	1254	49.7	53	25
Nebraska	154	14.9	[3] 476	16	630	30.9	33	878	45.0	41	1401	54.9	58	25
South Dakota	260	20	[2] 400	13	660	33.0	34	908	49.1	43	1431	57.0	58	24
Kansas	275	18.9	[4] 436	16	711	34.9	36	959	49.0	45	1482	58.9	60	24
Colorado	514	26.8	[4] 436	16	950	42.8	44	1198	56.9	51	1721	66.8	67	23

[1] Increment in scale rate for distance beyond Chicago.
[2] From Minneapolis, Minn.
[3] From Omaha, Nebr.
[4] From Kansas City, Mo.

67 TABLE IV.—*In-bound rail factors and average all-rail combinations via Chicago from barge origins indicated*

From—	To Chicago		To central territory			To trunk line—New England				
	Rail distance	Rail rate	Distance	Combination through rate	W. t. l. scale	Distance	Combination through rate	W. t. l. scale		
								For inbound distance	For through distance	Balance [1]
	Miles	Cents	Miles	Cents	Cents	Miles	Cents	Cents	Cents	Cents
Morris, Ill	59	[2] 9.5	307	25.2	22	830	33.5	9.5	40	30.5
Seneca, Ill	69	[2] 9.5	317	25.2	22	840	33.5	10.5	40	29.5
Ottawa, Ill	82	[2] 10.0	330	25.7	23	853	34.0	13.0	41	28.0
La Salle, Ill	95	[2] 12.0	343	27.7	23	866	36.0	13.0	41	28.0
Henry, Ill	120	12.0	368	27.7	24	891	36.0	14.0	42	28.0
Lacon, Ill	122	12.0	370	27.7	24	893	36.0	14.0	42	28.0
Chillicothe, Ill	131	12.0	379	27.7	24	902	36.0	14.0	42	28.0
Peoria, Ill	146	12.0	394	27.7	25	917	36.0	15.0	43	28.0
Havana, Ill	180	12.0	428	27.7	26	951	36.0	15.0	43	28.0
Naples, Ill	250	13.0	498	28.7	28	1021	37.0	17.0	45	28.0
Kansas City, Mo. [3]	436	[4] 25.0	684	[4] 39.1	35	1207	[4] 49.0	19.0	47	28.0
Kansas City, Mo. [4]	436	[4] 15.0	684	[4] 30.1	35	1207	[4] 40.0	26.0	52	26.0
								26.0	52	26.0

[1] Increment in scale rate for distance beyond Chicago.
[2] Lake local rates are 5 cents from Morris, 5.5 cents from Seneca and Ottawa, and 9 cents from La Salle.
[3] Local.
[4] Proportional.

89 TABLE V.—*Barge rates to Chicago, and average barge-rail combinations via Chicago, present, proposed and prescribed (with constructive through distances and comparisons with w. t. l. scale)*

From—	To Chicago		To central territory					To trunk line—New England				
				Barge-rail combination					Barge-rail combination			
	Barge distance	Barge rate	Distance (constructive) [1]	W. t. l. scale	Present	Proposed	On prescribed basis	Distance (constructive) [1]	W. t. l. scale	Present	Proposed	On prescribed basis
	Miles	Cents	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents
Morris, Ill	64	2.0	264	20	18.1	21.4	19.0	787	38	26.0	34.5	29.0
Seneca, Ill	75	2.25	267	20	18.35	21.65	19.25	790	38	26.25	34.75	29.25
Ottawa, Ill	88	2.5	270	20	18.6	21.9	19.5	793	39	26.5	35.0	29.5
La Salle, Ill	104	2.75	274	21	18.85	22.15	19.75	797	39	26.75	35.25	29.75
Henry, Ill	132	3.5	281	21	19.6	22.9	20.5	804	39	27.5	36.0	30.5
Lacon, Ill	139	3.5	283	21	19.6	22.9	20.5	806	39	27.5	36.0	30.5
Chillicothe, Ill	147	3.5	285	21	19.6	22.9	20.5	808	39	27.5	36.0	30.5
Peoria, Ill	165	4.0	289	21	20.1	23.4	21.0	812	39	28.0	36.5	31.0
Havana, Ill	208	4.25	300	22	20.35	23.65	21.25	827	40	28.25	36.75	31.25
Naples, Ill	262	5.0	313	22	21.1	24.4	22.0	836	40	29.0	37.5	32.0
Kansas City, Mo.[2]	722	9.5	428	26	27.6	28.9	26.5	951	45	33.5	42.0	36.5
Kansas City, Mo.[2]	722	11.0	428	26	25.1	25.1	28.0	951	45	35.5	35.5	38.5

[1] Based on one-fourth of barge distance to Chicago plus average rail distance beyond.
[2] Grain products.

APPENDIX B

PRODUCTION-SHIPMENT STATISTICS

TABLE I.—*Production of corn and wheat in 1942, in thousands of bushels*

State or group of States	Corn	Wheat
Illinois	433,438	12,819
Wisconsin	108,544	1,717
Iowa	596,796	4,749
Missouri	146,899	9,085
Minnesota	207,190	23,170
Nebraska	242,708	69,908
North Dakota	29,000	149,844
South Dakota	103,214	45,274
Kansas	90,060	206,775
Colorado	19,138	27,848
Montana	3,800	73,783
Wyoming	2,013	4,288
Far West	9,421	111,856
Southwest	179,512	109,863
Total	2,166,733	850,928
Central territory	486,199	66,749
Trunk-line territory	147,677	38,831
New England	8,292	40
Southeast	366,253	24,679
Total	1,008,421	130,299
Grand total	3,175,154	981,227

70 TABLE II.—*Receipts of corn and wheat at principal markets in 1942, in thousands of bushels*

Market	Corn	Wheat
Chicago, Ill	105,817	20,529
Milwaukee, Wis	10,237	1,698
Peoria, Ill	44,582	4,936
St. Louis, Mo	26,042	11,880
Kansas City, Mo	38,610	73,820
St. Joseph, Mo	7,839	10,546
Wichita, Kans	42	22,245
Hutchinson, Kans	3	37,140
Omaha, Nebr	24,849	18,358
Sioux City, Iowa	12,161	5,474
Minneapolis, Minn	19,169	138,708
Duluth, Minn	12,841	58,976
Indianapolis, Ind	26,664	5,272
Detroit, Mich	2,000	1,787
Buffalo, N. Y.:		
Ex-rail	32,312	72,846
Ex-lake	13,929	74,228

71 TABLE III.—*Grain in and out of Chicago 1940–1943, in thousands of bushels*

Grain and year	Lake		Barge		Rail		Truck
	In	Out	In	Out	In	Out	In
Year 1940:							
Corn		38,895	16,266		71,918	27,329	4,943
Wheat	2,636	6,817	2,773		22,367	13,470	388
Oats	402	102	174		17,690	16,130	278
Soybeans	120	153	753		8,804		233
Year 1941:							
Corn		23,403	15,349		81,717	43,576	3,100
Wheat	1,404	1,709	1,695	688	18,411	11,945	540
Oats		350	211		19,840	15,671	808
Soybeans		152	442		11,541	3,629	539
Year 1942:							
Corn		12,620	15,094		88,482	51,126	2,241
Wheat	863	212	550		18,885	24,018	231
Oats	730		53		18,156	18,019	211
Soybeans			197		9,125	3,519	462
Year 1943 (first 10 months):							
Corn		5,133	10,788	77	66,570	44,137	698
Wheat		3	31		36,616	34,555	68
Oats	3,710		161	205	14,886	13,789	52
Soybeans					15,681	3,901	95

72 TABLE IV.—*Analysis of barge corn shipped to Chicago for representative period during 1942–1943*

Country stations (number)	Distance	Truck	Total truck barge	Rail rates		Bushels
				Interstate	Lake local	
	Miles	*Cents*	*Cents*	*Cents*	*Cents*	
6	1.0–12.0	0.9–1.8	3.40–6.75	9.5–12	5–9	2,826,959
17	3.0–15.0	2.2–2.7	5.40–6.70	9.5–12	5.5–9	2,834,052
59	8.0–26.0	3.1–3.6	5.80–8.55	8.5–13	5.5–10	8,765,679
37	20.0–41.0	4.0–4.5	6.70–7.95	9.5–12	6–10.5	1,838,297
13	17.7–46.0	4.6–5.4	7.60–8.85	10–13	5.5–10	913,828
4	21.3–40.0	5.8–6.3	9.25–9.75	12	8.5–10.5	137,212
2	83.1	7.1	10.55	12	10	1,891
1	57.6	8.9	12.35			13,267
4	77.2	12.5	15.95	12–13	11–12	53,699
143	1.0–77.2	0.9–12.5	3.40–15.95	8.5–13	5–12	16,382,314

Recapitulation by Barge Origins

Origin	Bushels
Morris, Ill	7,222,674
Seneca, Ill	2,137,219
La Salle, Ill	4,496,882
Ottawa, Ill	2,007,394
Hennepin, Ill	369,426
Henry, Ill	142,042
Chillicothe, Ill	139,562
Havana, Ill	49,036

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ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 13th day of February, A. D. 1945

INVESTIGATION AND SUSPENSION DOCKET NO. 4718

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY

It appearing, That by order dated October 14, 1939, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until May 15, 1940; and that, subsequently, by voluntary action of respondents, the effective date of said schedules was postponed pending the outcome of the further hearing referred to herein;

It further appearing, That Division 2, on July 31, 1941, issued its original report and order, and the Commission, on December 1, 1941, issued its report and order on reconsideration, and that on petition of certain interests, the Commission, by order dated July 13, 1943, reopened said proceedings for further hearing for the purposes enumerated in said order of that date;

And it further appearing, That such further hearing has been held, and full investigation of the matters and things involved has been made, and the Commission having, on the date hereof, made and filed its report on further hearing containing its findings of fact and conclusions thereon, which report, together with said reports of July 31 and December 1, 1941, are hereby referred and made parts hereof:

74 It is ordered, That respondents herein be, and they are hereby, notified and required to cancel said schedules, on or before April 5, 1945, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and that this proceeding be discontinued.

By the Commission.

[SEAL] W. P. BARTEL, *Secretary.*

75 *Exhibit B to complaint*

Before the Interstate Commerce Commission

I. & S. Docket No. 4718

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY

MOTION FOR LEAVE TO FILE A PETITION FOR REHEARING UNDER RULE 101 (E)

The report of the Commission was issued under date of December 1, 1941, 248 I. C. C. 307, and the opinion of the Supreme Court has just been issued on June 14, 1943, Volume 11, United States Law Week, page 4482 and the following.

The decision of the Supreme Court is that the lawfulness of the proposed rate schedules has not been determined by the Commission, nor by the courts. (The dissenting opinion proceeds on the ground that it was not within the discretion of the Commission to limit its action to rejection of a specific legal criticism made by those who were parties before it at the time when the record was made on the facts, prior to the taking effect of the Transportation Act of 1940; and it states considerations bearing upon the lawfulness of the proposed schedules under the Transportation Act of 1940.)

76 Fundamental questions are raised by the proposed schedules if they are judged under the Transportation Act of 1940 and particularly by the proposed differentiation by rail carriers in respect of their rates between the traffic of connecting carriers by water and that of connecting carriers by rail; and it is in the interest of rail carriers, water carriers, the shipping public and the war effort, that these questions should not be left indefinitely in suspense but should be determined with all convenient speed.

Such petition was not previously filed for the reason that certain expressions of the Commission especially mentioned by the opinion of the Supreme Court had led the petitioner to believe that the Commission had passed on the lawfulness of the proposed rates under the Transportation Act of 1940.

Wherefore leave is requested to file the attached petition.

Respectfully submitted,

EDWARD B. HAYES,

Attorney for A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line.

Before the Interstate Commerce Commission.

I. & S. Docket No. 4718.

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY.

PETITION FOR REHEARING AND FOR AN ORDER FIXING SPECIFIC RESHIPPING RATES ON EX-BARGE GRAIN.

Reference is made to the report and order of the Commission on reconsideration, 248 I. C. C. 307, and the opinion of the Supreme Court, and dissenting opinion, June 14, 1943, Volume 11, United States Law Week, page 4482 and following.

The Supreme Court has decided that it was in the discretion of the Commission to dispose of the I. & S. proceeding on the ground that the fundamental legal proposition advanced by the protestants before it at the time when the evidence was heard, was an erroneous one.

The Commission stated that argument, and the Court adopts the Commission's statement of it: "To adopt protestant's premise would mean that all proportional rates differing from each other according to the length and nature of the inbound haul, would have to be condemned."

The court's opinion likewise reflects the thought that to decide the new issues prescribed under Section 3 (4) as amended in 1940 and the new National Transportation Policy, upon a record made and closed before the act was approved under which those issues arose, would be unfortunate, and in this connection the Court relies upon and quotes language of the Commission's report on reconsideration suggesting that on a proper record, by which we understand a record made with reference to the situation under the Act as amended in 1940, Commission action might well be taken to prescribe proportions for ex-barge grain.

The Supreme Court emphasizes that the proposed schedules have not been approved as lawful—not by the Commission, nor by the Court. The Court points out that notwithstanding anything that has been done here or by the Court, the proposed rates are still open to the charge of unlawfulness, and thus to reparation proceedings should that charge be sustained in any future proceeding under the Interstate Commerce Act as amended in 1940.

It goes without saying that the question of what rates may lawfully prevail on the rail portion of this important barge-rail movement should be determined as speedily as possible. The dissenting opinion in the Supreme Court was written on the premise that the lawfulness of the proposed schedules had been determined and therefore was before the Court. Whatever may be thought of the

attitude that the Court would take in a case in which all or a majority of the Justices agreed that the lawfulness of the proposal was presented (and the considerations pointed out by the dissenting opinion, that would become pertinent in that situation, are suggestive) perhaps there will be no disposition to deny that the proposed schedules arouse very grave doubts of their validity under tests that lie within the scope of the action of the Commission under the Interstate Commerce Act as amended in 1940.

The record already made before the Commission covers, in part, the field that would necessarily be explored by any record made on the issues of the invalidity of the proposed
79 rates on the grounds here advanced, and on the level of rates that should prevail for ex-barge grain; and if that record were available would pro tanto expedite the proceeding. (Indeed, it would seem from the Court's opinion that a different legal position by protestants on that same record would require further action of the Commission, since the effect of the Commission's action hitherto is limited by the Court to denial of the legal position taken by those who were parties before it when that record was made.). No good purpose would be served by delaying the determination of (1) the lawfulness of the proposed schedules, (2) the rates that may prevail as to the rail portion of the barge-rail movement. The only effect of denying use of the record already made would be to delay the determination of those questions. And it is appropriate, we suggest, that the first of them—the lawfulness of the specific rate proposal made by the rails—should be determined in the I. & S. proceedings. There is nothing to prevent the Commission from exercising, as it is here asked to do, its powers under the other sections of the statute at the same time, and thus coming to some solution of the general problem presented, instead of choosing between two alternatives only—the present rates on the one hand, and, on the other, the proposed rail schedules, whose lawfulness the Supreme Court holds has not been determined, and whose unlawfulness we assert on grounds wholly different from the sole argument which the Supreme Court has held to be an invalid one.

The scope of exploration of the facts by the Commission under this application will be determined by the Commission. Our requests are:

(1) That the lawfulness of the proposed schedules under the Interstate Commerce Act as amended in 1940 (and especially under Section 1, 2, Section 3 at amended by the Transportation Act of 1940, and the new National Transportation Policy enacted by the Transportation Act of 1940) be investigated and determined upon the record made and such further record as the Commission and the parties in interest may desire that
80

is addressed to the considerations raised by the Transportation Act of 1940 and the grounds of objection raised by this petitioner, and that upon such investigation the proposed schedules be condemned not merely on the ground that the rail service for the on-haul from the rate-break points is the same, but on the grounds that

(a) The proposed schedules violate Section 3 (4) of the Interstate Commerce Act as amended by the Transportation Act of 1940; and especially (not exclusively) in that they constitute a proposed discrimination against the traffic of this petitioner, a connecting common carrier of grain with respondents, in the rates and charges of respondents, inasmuch as the grain traffic of petitioner to the rate-break points would be gravely injured and crippled, to the detriment of the barge lines and the shipping public, all without any corresponding advantage to the respondents who propose the new schedules; and in that the proposed differentiation in the rail rate for the on-haul of ex-barge and ex-rail grain, to the disadvantage of ex-barge grain, is a discrimination, inasmuch as that differentiation is proposed notwithstanding the same kind of grain is involved, from the same origin west of Chicago, to the same eastern destination.

(b) The proposed schedules would violate the new National Transportation Policy enacted by the Transportation Act of 1940; and especially (not exclusively) in that by imposing a net increase in the cost of moving grain from country origin to destinations east of Chicago by barge-rail by the medium of imposing a higher rail rate for the on-haul wherever there is low water barge rate for the in-haul, they *pro tanto* destroy the inherent low cost advantage of water transportation, and constitute a de-
81 structive practice, without justification in any other consideration indicated by the law as stated in the new National Transportation Policy.

(c) The proposed schedules are violative of Section 1 of the Interstate Commerce Act as amended by the Transportation Act of 1940; and especially (not exclusively) in that they would result in great decrease of barge-rail grain movement through the rate-break points, and substantially stop that movement, especially to Trunk Line and New England destinations.

(d) The proposed schedules are violative of Section 2 of the Interstate Commerce Act as amended by the Transportation Act of 1940; and especially (not exclusively) in that the proposed differentiation in the rail rate for the on-haul of ex-barge and ex-rail grain, to the disadvantage of ex-barge grain, is not just under any test of Section 2 as amended, inasmuch as the same kind of grain, from the same origin, would take the higher or lower rate for the same on-haul service to the same destination, on the sole

test of whether it came to the rate-break point by rail, or lake steamer, on the one hand, or by barge via the Illinois Waterways, on the other hand.

(2) That the Commission will in the same proceeding investigate and hear evidence and exercise its powers and especially (not exclusively) under the new National Transportation Policy and Sections 1, 2, 3, and 6 of the Interstate Commerce Act as amended in 1940, to determine the rates that may lawfully prevail for the rail on-haul of grain coming to the rate-break points involved by barge, and the relation between such rates and the rates for the rail on-haul service from the rate-break points of grain coming to the rate-break points involved by rail, and having both the same shipping or reshipping point west of Chicago, and the same destination east of Chicago.

Petitioner submits that the present rail rate proposal is unlawful; and that any other proposal made in advance of
82 the hearing of evidence as herein prayed would be an empty gesture, and is not required by the law or the rules or practice of this Commission as a condition of the relief here asked.

Summarizing the character of evidence to be presented, petitioner offers to show

(1) That the proposed schedules would differentiate in respect of the rate for the rail on-haul from the rate-break points involved between ex-barge grain on the one hand and ex-rail grain and ex-lake grain on the other, even though the origin of the grain is the same, the destination is the same, and the rail service is the same—and without a rational relation to any consideration whatever other than the sole consideration that ex-barge grain comes by barge, and ex-rail and ex-lake grain comes by other and favored modes of transportation to the transit point, and without regard or rational relation to any purpose other than the unlawful purpose to destroy the inherent low-cost advantage of water transportation in the movement of grain to the rate-break point in question.

(2) That transit of ex-barge grain can be policed.

(3) That the barge-rail movement would be, with negligible exceptions, stopped by the proposed rail schedules,

(a) To New England and Trunk Line Territory;

(b) To Central Territory east of the line where barge-rail combinations cease to be lower than or equal to all-rail charges;

(c) To all Central Territory destinations.

(4) That with negligible exceptions under the presently established schedules barge-rail grain is not shipped to Central Territory except such as has been sold on a delivered eastern basis.

(5) The extent of the exceptions, if any, to the foregoing.

83 (6) The proportions of barge-rail grain moving to Eastern territory under the present schedules.

(7) That ex-barge grain, with negligible exceptions, will disappear from the Chicago market insofar as it must find rail outlets, under any system of rail rates for the move east that is designed to put the ex-barge grain at a rate disadvantage compared with ex-rail grain.

(8) The extent to which ex-barge grain is dependent on escape by rail.

(9) That the only escape east for ex-barge grain is rail or lake steamer; and the inadequacy of the escape by lake steamer, especially under war conditions.

(10) The extent to which the economic cost of the grain movement through Chicago would be increased by any increase of rail rate for the on-haul of ex-barge grain, and that this increase would be reflected in a loss to farm producers of grain.

(11) That the advantage of any such differentiation of ex-barge and ex-rail grain to the disadvantage of the shipping public in respect of the rail rate for the on-haul

Would not benefit the eastern lines;

Would benefit the western lines only insofar as they transferred or built facilities to move into Chicago grain that now comes there by barge;

And that the western lines do not now have such facilities in that trade;

That it would hamper the war effort if western lines were to transfer or build such facilities, and it is doubtful if they would be permitted to transfer or build them;

That the consequence would be that grain now coming to Chicago for direct movement east would either cease to be produced or go downstream (insofar as it was not uneconomically fed on the farm) to find ultimate escape only by using salt water shipping

space urgently needed for other purposes of the war effort;

84 Would sacrifice the economic advantage of cheap water transportation with no off-setting advantage to anyone.

(12) That the war has placed heavy burdens on rail transport, including the western lines bringing grain to Chicago, and that it is not in the interest of the national defense to eliminate or cripple barge transportation in this important trade in vital foodstuffs.

Wherefore, petitioner prays for relief as hereinbefore requested.

85 BRIEF IN SUPPORT OF PETITION FOR REHEARING.

It is anomalous and unfortunate to terminate any I. and S. proceeding without determining the lawfulness of the rate proposal involved. It would be equally unfortunate in the circumstances

to fail to take advantage of the right to exercise all the Commission's powers: the interest of the rail and water carriers involved, of the shippers, and the national defense, are not served by leaving the questions presented to wander indefinitely in a procedural maze, but are served by determination of these questions as speedily as is consistent with full hearing and consideration.

Respectfully submitted.

EDWARD B. HAYES,

Attorney for A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line.

JUNE 22, 1943.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceding, by mailing by first-class mail a copy thereof properly addressed to each such party.

Dated at Chicago, Illinois, this 22nd day of June 1943.

EDWARD B. HAYES.

86 *Exhibit C to complaint*

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION held at its office in Washington, D. C., on the 13th day of July, A. D. 1943

I. & S. No. 4718

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY

It appearing, That in the report of the Commission on reconsideration in the above-entitled proceeding, 248 I. C. C. 307, the Commission said that "in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations."

It further appearing, That motions requesting leave to file petitions for rehearing and for an order fixing specific reshipping rates on ex-barge grain, together with such petitions, have been filed by Cargill, Incorporated; Continental Grain Company, Norris Grain Company; Rosenbaum Brothers; Santa Fe Elevator Corporation; and A. L. Mechling, doing business as A. L. Mechling Barge Line; and that said petitioners request rehearing for the purpose of presenting evidence which will permit the Commission to prescribe and fix reshipping rates on ex-barge grain predicated on the particular circumstances and conditions which surround its transportation;

It further appearing, That the said petitions in effect are complaints which bring in issue the lawfulness of rates applicable on

the through movement of the traffic considered in the instant
87 proceeding; and that the record therein may be of assistance in determination of the issues presented by said petitions.

And it further appearing, That the said petitions and replies thereto have been considered in the light of the record herein and the opinion of the Supreme Court of the United States in Interstate Commerce Commission, et al. v. Inland Waterways Corporation, et al., decided June 14, 1943.

It is ordered, That this proceeding be, and it is hereby, reopened for further hearing for the purpose of receiving evidence (1) on the questions of whether or not reshipping or proportional rates should be prescribed for interstate transportation by railroad of ex-barge grain, in carloads, from Chicago, Ill., and other related points of origin embraced in the instant proceeding to eastern destinations considered therein, and if so, to determine what would be reasonable and otherwise lawful proportional or reshipping rates for application on such traffic, and (2) to determine what, if any, reasonable and otherwise lawful joint rates for the interstate transportation of grain, in carloads, from points of origin served by said A. L. Mechling, doing business as A. L. Mechling Barge Line, to said eastern destinations, shall be prescribed.

And it is further ordered, That this proceeding be, and it is hereby, assigned for further hearing on August 16, 1943, at 9:30 o'clock, a. m., at the Hotel Morrison, Chicago, Ill., before Examiner Fuller.

By the Commission:

[SEAL] W. P. BARTEL, *Secretary.*

89 In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action File No. 45-C-866—Judge Labuy

INLAND WATERWAYS CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Complaint

Filed June 1, 1945

(Equitable Relief Sought)

90. 1. The plaintiff, Inland Waterways Corporation, brings this complaint against the United States of America and the Interstate Commerce Commission for the purpose of suspending, enjoining, setting aside, and annulling a certain order, more

particularly hereinafter described, issued by the Interstate Commerce Commission (hereinafter referred to as the Commission) on February 13, 1945, in a proceeding before the Commission known as Investigation & Suspension Docket No. 4718, Grain Proportionals, Ex-Barge to Official Territory, said order being reproduced as Appendix A hereto. This action arises under, the United States is made a defendant herein, and the
91 jurisdiction of this Court is conferred by, U. S. C., Title 28, Sections 41 (28), 43, 44, 45, 45 (a), 46, 47, and 48, as hereinafter more fully appears.

2. Plaintiff, Inland Waterways Corporation, is a corporation organized and existing under the laws of the United States, with its principal office and place of business at St. Louis, Missouri; it is engaged in the operation of a common carrier barge line system of transportation on the Mississippi River and certain of its tributaries, including a common carrier barge line service in interstate commerce via water from Kansas City, Missouri-Kansas, on the Missouri River, from St. Louis, Missouri, East St. Louis, Illinois, and various other ports in Illinois, Iowa, and Minnesota on the Mississippi River, and from various ports in Illinois on the Illinois River via Illinois Waterways, to Chicago, Illinois; and is a common carrier by water subject to Part III of the Interstate Commerce Act (U. S. C., Title 49, Sections 901–923).

3. In the course of its business, plaintiff holds itself out to transport and does transport to Chicago, Illinois, grain in interstate commerce via barge over various waterways, including the Illinois Waterways, from the various ports refererred to in paragraph 2 above (said grain being hereinafter referred to as ex-barge grain), from whence said grain is available for reshipment both via lake steamer and via the lines of the railroad common carriers to destinations to the east of Chicago. In recent years the preponderance of the grain transported to Chicago by the plaintiff has originated at elevators in the Kansas City, Missouri-Kansas, switching district, said grain having been shipped into said elevators via railroad from origins to the west thereof.

Prior to September 18, 1940, said transportation by plain-
92 tiff via barge was not subject to the Interstate Commerce Act, but on the date last mentioned said transportation became subject to Part III of the Interstate Commerce Act by virtue of the amendments to that Act added by the Transportation Act of 1940, enacted September 18, 1940 (U. S. C., Title 49, Sections 901–923). Since March 1, 1941, said transportation has been conducted on rates and charges published and filed with the Interstate Commerce Commission pursuant to the requirements of the statutes just mentioned. In performing such transportation services, the plaintiff is in competition with numerous

common carriers by railroad-operating lines from the same origins to Chicago (said railroads being hereinafter referred to as Western Lines), and the plaintiff and said Western Lines are connecting carriers at Chicago of various common carriers by railroad-operating lines from Chicago, Illinois, to interstate destinations to the east thereof. Plaintiff's ability to compete with said Western Lines in the movement of grain to Chicago is directly affected by the relation of the rates assessed upon the reshipment of its grain from Chicago to the rates assessed upon the reshipment of the grain brought to Chicago by said Western Lines.

4. For many years the rail carriers operating lines from Chicago to interstate destinations to the east thereof (hereinafter referred to as Eastern Lines), have maintained in tariffs, lawfully published and filed with the Commission, separately stated proportional or reshipping rates from Chicago, Illinois, to destinations located throughout the various states to the east thereof, which are (1) the same on ex-barge grain as on ex-lake grain (grain shipped to Chicago via lake and stored thereat in elevators, awaiting reshipment to the East via the rails of the Eastern Lines, pursuant to transit rules and regulations maintained by
93 said Eastern Lines) from all origins except that ex-barge grain from Kansas City to destinations in central freight association territory (Indiana, Michigan, Ohio, western New York, western Pennsylvania, and western West Virginia) is provided with separately stated proportional or reshipping rates which, generally speaking, are three cents less than those provided on ex-lake grain, and (2) the same on ex-barge grain as on ex-rail grain (grain reshipped to Chicago via rail and stored thereat in elevators, awaiting reshipment to the East via the rails of the Eastern Lines, pursuant to transit rules and regulations maintained by said Eastern Lines) from the same origin, except that ex-barge grain from Illinois origins is provided with the same separately stated proportional or reshipping rates as are applied on ex-rail grain from origins in a territory defined by the tariff as Northwest, all of said proportional and reshipping rates being lower than the corresponding rates published for application on grain shipped from Chicago as though independent of, and without reference to, any prior in-bound movement and known as "local" grain. By tariffs filed to become effective October 15, 1939 (Supplement No. 23 to Agent B. T. Jones' I. C. C. No. 3047, Supplement No. 67 to Agent B. T. Jones' I. C. C. No. 3055, Supplement No. 7 to Agent B. T. Jones' I. C. C. No. 3300, and Supplement No. 7 to Agent B. T. Jones' I. C. C. No. 3372), the Eastern Lines proposed (a) to restrict the application of the said reshipping and proportional rates so as to make them inapplicable to ex-barge grain received over the Illinois waterways when reshipped from

Chicago; and (b) to subject said ex-barge grain to the higher basis of the higher local rates from Chicago referred to in this paragraph. The plaintiff, on September 1, 1939, filed with
94 the Commission its written protest against the change in rates proposed in the tariff schedules above noted, urging that such change in rates, if made effective, would be in violation of Sections 1 and 3 of the Interstate Commerce Act (U. S. C., Title 49, Sections 1 and 3), and on October 4, 1941, filed its supplemental written protest, requesting that the Commission suspend the operation of said schedules and enter into an investigation concerning the lawfulness thereof, pursuant to the authority conferred upon the Commission by paragraph (7) of Section 15 of the Interstate Commerce Act (U. S. C., Title 49, Section 15 (7)).

5. Thereupon, the Commission, by order of October 14, 1939, suspended the operation of said proposed change in rates and instituted an investigation into the lawfulness thereof in Investigation & Suspension Docket No. 4718, above mentioned, and the Eastern Lines, by appropriate supplements to their tariffs, deferred the effective date of the above described proposed change in rates on ex-barge traffic, and said change in rates and charges has not yet been made effective. Hearings were duly had in the proceeding instituted by that order and the parties were heard on brief, on exceptions to a report proposed by an Examiner of the Commission, and in oral argument.

6. On July 31, 1941, Division 2 of the Interstate Commerce Commission entered its report and order in said proceedings as shown in 246 I. C. C. 353, which report and order is made a part hereof by reference; in that report and order the said Division 2 found that the tariff schedules under suspension had not been shown to be unlawful. Accordingly, Division 2 vacated and set aside the suspension order and discontinued the proceeding as of August 30, 1941.

7. On August 22, 1941, the Commission modified its order
95 of July 31, 1941, so as to become effective on October 15, 1941, instead of August 30, 1941, and on September 30, 1941, the Commission further modified its order of July 31, 1941, as modified by the order of August 22, 1941, so as to postpone the effective date thereof until the further order of the Commission.

8. On December 4, 1941, the Commission issued its report and order on reconsideration in said proceeding as shown in 248 I. C. C. 307, which report and order is made a part hereof by reference. In its said report the Commission found that the proposed schedules had been shown to be just and reasonable, had not been shown to be otherwise unlawful and by its order the Commission vacated and set aside its order of suspension as of December 22, 1941, and discontinued the proceeding.

9. On December 15, 1941, plaintiff filed its complaint against the United States of America, et al., defendants, Civil Action No. 3725, in the District Court of the United States for the Northern District of Illinois, Eastern Division, to enjoin and set aside the operation and effect of the Commission's order of December 1, 1941, above referred to. The Secretary of Agriculture filed a petition of intervention on February 6, 1942. A petition of intervention also was filed by A. L. Mechling, doing business as A. L. Mechling Barge Lines. A like complaint against the same defendants was filed in the same court by Cargill, Inc., et al., seeking the same relief, i. e., a decree enjoining and setting aside the order of December 1, 1941, and was docketed as Civil Action No. 3714. On February 6, 1942, the two cases, Civil Action Nos. 3725 and 3714, were consolidated, and on April 16, 1942, the District Court of the United States entered its final decree perpetually enjoining and setting aside the order of the Commission of December 1, 1941.

96 10. On appeal to the Supreme Court of the United States that court reversed the decree of the District Court of the United States and held that the Commission had acted within the power delegated to it by law. Interstate Commerce Commission v. Inland Waterways Corporation, 319 U. S. 671, decided June 14, 1943.

11. On July 13, 1943, the Commission entered the following order:

"Grain Proportionals, Ex-Barge to Official Territory

"It appearing, That in the report of the Commission on reconsideration in the above-entitled proceeding, 248 I. C. C. 307, the Commission said that 'in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations.'

"It further appearing, That motions requesting leave to file petitions for rehearing and for an order fixing specific reshipping rates on ex-barge grain, together with such petitions, have been filed by Cargill, Incorporated; Continental Grain Company; Norris Grain Company; Rosenbaum Brothers; Santa Fe Elevator Corporation; and A. L. Mechling, doing business as A. L. Mechling Barge Line; and that said petitioners request rehearing for the purpose of presenting evidence which will permit the Commission to prescribe and fix reshipping rates on ex-barge grain predicated on the particular circumstances and conditions which surround its transportation;

"It further appearing, That the said petitions in effect are complaints which bring in issue the lawfulness of rates applicable on the through movement of the traffic considered in the instant pro-

ceeding; and that the record therein may be of assistance in determination of the issues presented by said petitions.

"And it further appearing, That the said petitions and replies thereto have been considered in the light of the record herein
97 and the opinion of the Supreme Court of the United States in Interstate Commerce Commission, et al., v. Inland Waterways Corporation, et al., decided June 14, 1943.

"It is ordered, That this proceeding be, and it is hereby, reopened for further hearing for the purpose of receiving evidence (1) on the questions of whether or not reshipping or proportional rates should be prescribed for interstate transportation by railroad of ex-barge grain, in carloads, from Chicago, Ill., and other related points of origin embraced in the instant proceeding to eastern destinations considered therein, and if so, to determine what would be reasonable and otherwise lawful proportional or reshipping rates for application on such traffic; and (2) to determine what, if any, reasonable and otherwise lawful joint rates for the interstate transportation of grain, in carloads, from points of origin served by said A. L. Mechling, doing business as A. L. Mechling Barge Line, to said eastern destinations, shall be prescribed.

"And it is further ordered, That this proceeding be, and it is hereby assigned for further hearing on August 16, 1943, at 9:30 o'clock a. m., at the Hotel Morrison, Chicago, Ill., before Examiner Fuller."

Meantime, the Eastern Lines voluntarily postponed the effective date of the proposed schedules pending the outcome of the further hearing. Further hearing was had and on February 13, 1945, the Commission entered its report and order on further hearing, containing its findings of fact and conclusions thereon.

The report of the Commission found that the rates under suspension proposed on the local rail rate basis were unlawful, among other reasons, because in violation of Section 3 (4) of the Interstate Commerce Act; accordingly, the suspended schedules were ordered to be cancelled on or before April 5, 1945.

The Commission found, as an ultimate conclusion, that
98 reshipping or proportional rates for transportation of ex-barge grain, in carloads, from Chicago, Illinois, to eastern destinations will be reasonable and lawful under Sections 1, 2, 3 (1), 3 (4), 6 (11) (b), and 15a (2) of the Interstate Commerce Act (U. S. C., Title 49, Sections 1, 2, 3 (1), 3 (4), 6 (11) (b), and 15a (2), if made certain differentials under the local rail rates contemporaneously in effect, said differentials being as follows:

When local rail rate on grain is (cents):

13-14.

15-22.

23–24.
25–26.
27–28.
28.5 and over.

Differential, ex-barge under local rail rate, shall be (cents):
1.
2.
3.
4.
5.
5.5.

The result of the foregoing method of determining the rate to be applied on ex-barge grain east of Chicago is that the prescribed rates on ex-barge grain east of Chicago are higher than the proportional rates on ex-rail grain from the same origins and higher that the proportional rates on ex-lake grain from all origins by varying amounts ranging up to 3 cents per hundred pounds. A copy of the report and order of the Commission is attached hereto as Appendix A to this complaint.

On March 26, 1945, the Commission modified its order of February 13, 1945, so that the same will become effective on June 5, 1945, upon one day's notice instead of on April 5, 1945.

12. If said order of February 13, 1945, is permitted to
99 become effective, and the Eastern Lines make the change in rates and charges found lawful and authorized thereby, the plaintiff will be unable to compete with Western Lines for the transportation of grain transported to Chicago for the purpose of reshipment therefrom by rail. The value of ex-barge grain at Chicago is precisely the same as the value at Chicago of ex-lake or ex-rail grain of the same species and grades. Under the relationship in rates and charges prescribed by the Commission in its report, the rate on ex-barge grain from Chicago to New York City, as a representative destination, if shipped, would be 3 cents per hundred pounds higher than the rate from Chicago to New York City on ex-lake or ex-rail grain.

No shipper will use the line of the plaintiff for its inbound transportation to Chicago of grain to be shipped via rail to eastern destinations in the face of the rate penalty of 3 cents per hundred pounds just noted.

On grain stored at Kansas City, subsequent to a rail movement thereto and reshipped from elevators in the Kansas City switching district to Chicago, the proportional rate maintained by Western Lines from Kansas City to Chicago is 16 cents; and the plaintiff's rated by barge is 9.5 cents or 6.5 cents less than the rail

rate. On shipments by plaintiff's barge, the shipper must pay in addition to the 9.5 cents rate per hundred pounds the cost of trimming the grain during unloading and the service of weighing and inspection incident to the transfer of the grain from barges to cars at point of interchange, which aggregate 3.25 cents. The 6.5 cents saving in rate is thus reduced to 3.25 cents per hundred pounds and this saving would accrue only in respect to grain shipped out of a Kansas City elevator located on the river bank so as to involve no charge for switching from the elevator to the barge and no charge for loading into the barge.

100 In case of grain stored in an elevator away from the river bank and reshipped therefrom, a further expense not included in the barge rate is the charge of 39 cents per ton for transfer of grain from car to barge and a switching charge of $6.93, or $8.91 per car when loaded at and moved from a rail elevator to the river bank at Kansas City; the minimum extra expense on such grain is thus 2.64 cents per hundred when loaded from an elevator in cars of 100,000 pounds. Thus, all of the saving between rail proportional rate of 16 cents to Chicago and barge rate of 9.5 cents—6.5 cents—except .36 cents is absorbed in getting ex-barge grain at Chicago ready for rail haul east of Chicago. Under the prescribed 3-cent higher rail rate on ex-barge grain for the haul east of Chicago, the total cost to the shipper would be 2.64 cents per hundred pounds higher than if he were to route the shipment all-rail from Kansas City to New York City.

Under such circumstances plaintiff verily believes and therefore avers that shippers will use the lines of rail carriers with which plaintiff competes for the haul to Chicago and will not use the barge line of the plaintiff, since thereby reshipment via rail from Chicago to eastern destinations can be obtained at a freight rate 3 cents lower than if the grain so reshipped were brought into Chicago by the plaintiff.

By reason of the circumstances just described, plaintiff verily believes and therefore avers that it will be unable to secure traffic which it would otherwise secure, and will be subjected to irreparable damage and injury if the Eastern Lines make effective the change in rates and charges found lawful and authorized in the report and order of the Commission of February 13, 1945.

101 13. The report and order of the Commission of February 13, 1945, is unlawful and void and beyond the power of the Commission to make for the following reasons:—

(a) Said report and order is not supported by essential findings of fact to show that the circumstances and conditions surrounding barge-rail transportation from Kansas City to New York, as representative of eastern territory, or the transportation by rail of ex-barge grain from Chicago to New York, are different from

those surrounding lake-rail transportation from Duluth via Chicago to New York, or the transportation by rail of ex-lake grain from Chicago to New York, so as to justify a proportional or reshipping rate on the ex-barge traffic 3 cents per hundred pounds higher than on the ex-lake traffic.

(b) The report and order authorizing the reshipping or proportional rate from Chicago to New York, as representative of eastern territory, on ex-barge grain from Kansas City higher than on ex-lake grain from Duluth rests on an erroneous construction of Section 3 (4) of the Act and was beyond the power of the Commission to enter.

(c) Said report and order is not supported by essential findings of fact to show that circumstances and conditions surrounding barge-rail transportation from Kansas City to New York, as representative of eastern territory, or the transportation by rail of ex-barge grain from Chicago to New York, are different from those surrounding all-rail transportation from Kansas City via Chicago to New York, or the transportation by rail of ex-rail grain from Chicago to New York, so as to justify a proportional or reshipping rate on the ex-barge traffic 3 cents per hundred pounds higher than on ex-rail traffic from the same origin.

102 (d) The Commission misconstrued and exceeded its power under Section 3 (4) of the Act in authorizing a higher proportional or reshipping rate from Chicago to New York on ex-barge grain from Kansas City than is contemporaneously provided on ex-rail grain from Kansas City, said disparity purporting to be based on differences in the average circumstances and conditions surrounding all-rail grain, on the one hand, as compared with all barge-rail grain, on the other. The duty of the Commission in the premises was to fix the relation between said ex-barge and ex-rail rates in the light of the conditions surrounding the particular traffic for which plaintiff is in competition with Western Lines, viz, grain shipped from Kansas City and transported to eastern destinations via Chicago with a transit stop at the latter point.

(e) The Commission misconstrued and exceeded its power under Section 3 (4) of the Act in finding that a non-discriminatory reshipping or proportional rate on ex-barge grain, originated by plaintiff at Kansas City, could be determined by computing the average difference between the railroad local rates from barge origins to Chicago, on the one hand, and the through w. t. l. scale from said origins to eastern destinations, on the other hand.

(f) Said report and order contain no finding that the prescribed rate basis or relationship would permit grain to move via barge-rail routes from Kansas City to the east via Chicago.

(g) The Commission was without power to make the order complained of for the reason that it is apparent from the face of the report that the prescribed rates east of Chicago, applicable on plaintiff's grain transported by it in its barges from Kansas City to Chicago would destroy the inherent advantage of barge
103 transportation in connection with barge-rail routes to official territory in contravention of the national transportation policy and without regard to the rate-making factor stated in Section 15a (2) of the Interstate Commerce Act.

(h) There is no evidence of record upon which the Commission could find:

When local rail rate on grain is (cents):

13–14.
15–22.
23–24.
25–26.
27–28.
28.5 and over.

Differential, ex-barge under local rail rate, shall be (cents):

1.
2.
3.
4.
5.
5.5.

and therefore the said order of February 13, 1945, is void.

(i) The Commission was without authority in law or in fact to make said order of February 13, 1945.

Wherefore, plaintiff prays:

That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of February 13, 1945, until final determination of this cause, and that upon final hearing herein, a decree be entered perpetually enjoining and setting aside the operation and effect of said order; and

That plaintiff have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

JOHN S. BURCHMORE,
NUEL D. BELNAP,
LUTHER M. WALTER,
Attorneys for Plaintiff.

WALTER, BURCHMORE & BELNAP,
Of Counsel.
2106 Field Building, Chicago 3, Illinois.

JUNE 1, 1945.

163 In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action File No. 45-C-1620

THE SECRETARY OF AGRICULTURE OF THE UNITED STATES AND THE WAR FOOD ADMINISTRATOR, PETITIONERS

v.

UNITED STATES OF AMERICA

Petition

Filed June 27, 1945

1. The Petitioners, the Secretary of Agriculture of the United States and the War Food Administrator, file this petition against the United States of America for the purpose of suspending, enjoining, setting aside, and annulling a portion, more particularly specified in the Prayer hereof, of a certain Order issued by the Interstate Commerce Commission (hereinafter called the "Commission") on February 13, 1945, incident to a proceeding before the Commission identified in its files as Investigation and Suspension Docket No. 4718, Grain Proportionals, Ex-Barge to Official Territory. Said Order appears as a mimeograph release of the Commission and has been reproduced with the Report of the Commission and made a part thereof as Exhibit "A" in the complaint filed on June 1, 1945, on behalf of A. L. Mechling Barge Line (Civil Action 45-C-865) and as Exhibit "A" in a complaint filed on June 1, 1945, on behalf of Inland Waterways Corporation (Civil Action 45-C-866), to which reference is hereby made.

164 2. This action arises under, the United States is made a defendant herein, and the jurisdiction of the Court is conferred by U. S. C. Title 28, Section 41 (28), 43, 44, 45, 45 (a), 46, 47, and 48, and U. S. C., Title 7, Section 1291, as hereinafter more fully appears.

3. The Secretary of Agriculture and the War Food Administrator are proper parties plaintiff in view of provisions of Section 204 of the Agricultural Adjustment Act of 1938 (52 Stat. 36; U. S. C., Title 7, Section 1291), which provides as follows:

"(a) The Secretary of Agriculture is authorized to make complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same before the Commission. Before hearing or disposing of any complaint (filed by any person other than the Secretary) with respect to rates, charges,

tariffs, and practices relating to the transportation of farm products, the Commission shall cause the Secretary to be notified, and, upon application by the Secretary, shall permit the Secretary to appear and be heard.

"(b) If such rate, charge, tariff, or practice complained of is one affecting the public interest, upon application by the Secretary, the Commission shall make the Secretary a party to the proceeding. In such case the Secretary shall have the right of a party before the Commission and the rights of a party to invoke and pursue original and appellate judicial proceedings involving the Commission's determination. The liability of the Secretary in any such case shall extend only to liability for court costs.

"(c) For the purposes of this section, the Interstate Commerce Commission is authorized to avail itself of the cooperation, records, services, and facilities of the Department of Agriculture";

and pursuant to Executive Order 9334 of April 19, 1943 (8 F. R. 5423), which order transferred the powers of the Secretary of Agriculture under Section 201, supra, for joint administration, to the War Food Administrator, and pursuant to Executive Order 9280 of December 5, 1942 (7 F. R. 10179), which order, inter alia, directed the War Food Administrator "to formulate and carry out a program designed to furnish a supply of food adequate to meet" military, civilian, and foreign requirements, "both for human and animal consumption and for industrial uses," and to "take all appropriate steps to insure the efficient and proper distribution of the available supply of food."

4. For many prior years grain farmers near the Illinois Waterway have shipped their products in large volume to Chicago by barge, for trans-shipment from Chicago to eastern points and foreign destinations. Many of these producers were and are members of cooperative associations of farmers who have extensive river bank elevator facilities to handle the barge traffic. Barge traffic in grain via the Illinois Waterway to Chicago developed and was and is coordinated with rail traffic outbound eastward from Chicago under certain provisions in the tariffs of eastern railroads, which stated reshipping and proportional rates on grain moving from Chicago to eastern destinations equal to rates published to transport grain arriving in Chicago by rail or by lake, which rates were lower to common destinations than rates published for application to local grain shipped from Chicago to the same destinations.

5. Barge rates from water lading points in the grain production territory involved in this proceeding to Chicago are considerably lower than rail rates from the same points. Accordingly, certain common carriers by rail, hereinafter referred to as the "western

railroads," move very little of the grain originating in barge territory to Chicago.

6. Taking this fact into account said eastern railroads by tariffs filed to become effective October 15, 1939 (Supplement No. 23 to Agent B. T. Jones' I. C. C. No. 3047, Supplement No. 67 to Agent B. T. Jones' I. C. C. 3055, Supplement No. 7 to Agent B. T. Jones' I. C. C. No. 3300, and Supplment No. 7 to Agent B.
166 T. Jones' I. C. C. No. 3372,) proposed (a) to restrict the application of said reshipping or proportional rates so as to make them inapplicable to ex-barge grain received from the Illinois Waterways when reshipped from Chicago, and (b) to subject said ex-barge grain to the higher basis of the local rates from Chicago to eastern destinations.

7. In September 1939, certain parties filed a written protest with the Commission against the proposed rates above noted, charging that such advantage in rates, if made effective, would be in violation of the Interstate Commerce Act as it then read. Supplemental protests requesting the Commission to suspend the operation of said schedules and enter into an investigation concerning the lawfulness thereof were also filed.

8. Thereupon, the Commission, by Order of October 14, 1939, suspended the operation of the tariffs in question and instituted an investigation docketed as Investigation and Suspension Docket No. 4718.

9. Hearings were duly held by the Commission with reference to Docket No. I. & S. 4718 in Chicago, commencing on December 19, 1939, and ending on January 26, 1940. The Secretary of Agriculture, by counsel, entered an appearance at that hearing, and thereby became a party to the proceeding. Briefs were filed, exceptions noted to the proposed report of the Examiner of the Commission, and the parties were heard in oral argument.

10. On July 31, 1941, Division 2 of the Commission published its report and order in the proceeding, as shown in 246 ICC 253, which report and order are made a part hereof by reference. In that report and order, Division 2 found that the tariff schedules under suspension had not been shown to be unlawful, vacated and set aside the suspension order and discontinued the proceedings as of August 30, 1941.

167 11. On August 22, 1941, the Commission modified its order of July 31, 1941, so as to become effective on October 15, 1941, instead of August 30, 1941; and on September 30, 1941, the Commission further modified its order of July 31, 1941, as modified by the order of August 22, 1941, so as to postpone the effective date thereof until the further order of the Commission.

12. The Commission, on December 1, 1941, issued its report and order on reconsideration in said proceeding, as shown in 248

I. C. C. 307, which report and order are made a part hereof by reference, In its said report, the Commission found that the proposed schedules had been shown to be just and reasonable, had not been shown t obe otherwise unlawful, and by its order the Commission vacated and set aside its order of suspension as of December 22, 1941, and discontinued the proceeding.

13. In December 1941 certain of the protesting parties filed complaints against the United States in this Court, seeking the injunction and setting aside of said order of the Commission. The complaints were docketed as Civil Action No. 3725 and Civil Action 3714, and consolidated for hearing. The Secretary of Agriculture and other parties intervened. On April 16, 1942, the Court entered its final decree perpetually enjoining and setting aside said order of the Commission.

14. On appeal to the Supreme Court of the United States, that Court held that the Commission had not approved said railroad rate proposed and reversed the decree of the District Court. Interstate Commerce Commission *v.* Inland Waterways Corporation, 319 U. S. 671.

15. Pursuant to the statement of the Commission in its report of December 1, 1941, that in a proper proceeding it could prescribe reshipping rates on this ex-barge grain traffic, which statement was noted by the said decision of the Supreme Court, on July 13, 1943, the Commission entered the following order:

168 "Grain Proportionals, Ex-Barge to Official Territory.

"It appearing, That in the report of the Commission on reconsideration in the above-entitled proceeding, 248 ICC 307, the Commission said that 'in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations.'

"It further appearing, That motions requesting leave to file petitions for rehearing and for an order fixing specific reshipping rates on ex-barge grain together with such petitions, have been filed by Cargill, Incorporated; Continental Grain Company; Norris Grain Company; Rosenbaum Brothers; Santa Fe Elevator Corporation; and A. L. Mechling, doing business as A. L. Mechling Barge Line; and that said petitioners request rehearing for the purpose of presenting evidence which will permit the Commission to prescribe and fix reshipping rates on ex-barge grain predicated on the particular circumstances and conditions which surround its transportation;

"It further appearing, That the said petitions in effect are complaints which bring in issue the lawfulness of rates applicable on the through movement of the traffic considered in the instant proceeding; and that the record therein may be of assistance in determination of the issues presented by said petitions.

"And it further appearing, That the said petitions and replies thereto have been considered in the light of the record herein and the opinion of the Supreme Court of the United States in Interstate Commerce Commission, et al., v. Inland Waterways Corporation, et al., decided June 14, 1943.

"It is ordered, That this proceeding be, and it is hereby, reopened for further hearing for the purpose of receiving evidence (1) on the questions of whether or not reshipping or proportional rates should be prescribed for interstate transportation by railroad of ex-barge grain, in carloads, from Chicago, Illinois, and other related points of origin embraced in the instant proceeding to eastern destinations considered therein, and if so, to determine what would be reasonable and otherwise lawful proportional or reshipping rates for application on such traffic, and (2) to determine what, if any, reasonable and otherwise lawful joint rates for the interstate transportation of grain, in carloads, from points of origin served by said A. L. Mechling, doing business as A. L. Mechling Barge Line, to said eastern destinations, shall be prescribed.

169 "And it is further ordered, That this proceeding be, and it is hereby assigned for further hearing on August 16, 1943, at 9:30 o'clock A. M., at the Hotel Morrison, Chicago, Illinois, before Examiner Fuller."

16. The eastern railroads postponed the effective date of the proposed tariffs pending the outcome of the further hearing, which was held as scheduled in the above quoted order. An Examiner's report was duly proposed, exceptions thereto were filed, and the case, based upon the total record, i. e., the record of the hearings in December 1939, January 1940, and August 1943, was argued before the entire Commission.

17. On February 13, 1945, the Commission entered its report and order on further hearing, in which the Commission found, inter alia, that the rates under suspension were unlawful and ordered them to be cancelled on or before April 5, 1945. The Commission found, however, as an ultimate conclusion, that the reshipping or proportional rates for transportation of ex-barge grain, in carloads, from Chicago, Illinois, to eastern destinations will be reasonable and lawful under Sections 1, 2, 3 (1), 3 (4), 6 (11) (b), 15 (a). (2) of the Interstate Commerce Act (U. S. C. Title 49, Sections 1, 2, 3 (1), 3 (4), 6 (11), 15 (a), and 15 (a) (2), if based upon certain differentials under the prevailing local rates, said differentials being as follows:

When local rail rate on grain is (cents):

13–14.	25–26.
15–22.	27–28.
23–24.	28.5 and over.

Differential, ex-barge under local rail rate, shall be (cents):

1.	4.
2.	5.
3.	5.5.

The rates thus prescribed by the Commission are higher than the reshipping or proportional rates now applying on ex-barge, ex-rail and ex-lake grain by varying amounts up to three cents per 100 pounds.

170 18. On March 26, 1945, the Commission modified its order of February 13, 1945, so that the same would become effective on June 5, 1945, instead of April 5, 1945.

19. All grain of like grade and kind comes to a common value at the Chicago marketing place and distribution center, regardless of the means of transportation by which it reaches Chicago, the length of the in-bound haul, or the rate paid for the in-bound movement, provided it can all (as at present) be reshipped to eastern territory on the same charges and transit (as at present) in central territory, for delivery in eastern territory, on a basis of equal rates from Chicago to eastern territory. If the said order of the Commission should become effective, grain shipped to Chicago by barge would be discounted on the Chicago market and the amount of that discount would ultimately be reflected in a lower price paid to the farm producers of grain. The rate differential authorized by the said order of the Commission offsets the advantage of low in-bound barge rates to Chicago by an increase in the established rail rates out of Chicago. Buyers of grain in Chicago get no advantage in any given transaction of the low barge rates into Chicago, but such buyers must reckon with any increased costs of shipping grain out of Chicago. This they do by passing the disadvantage of such increases in cost back to the shipper. He, in turn passes it on to the farm producers. The foregoing result would be accentuated by the diversion to the western railroads of barge-borne grain inasmuch as the rates and services of barge carriers and waterway elevator loading and marketing facilities are in adjustment to the volume of barge-borne grain.

171 20. The transportation characteristics of ex-barge grain and ex-lake grain are identical and should have parity of treatment with respect to reshipping rates and charges applicable to each out of Chicago, accordingly. Pursuant to the report and order of the Commission attached herein, grain which reaches Chicago via the Great Lakes is authorized to move to Eastern destinations on the same basis as ex-rail grain while this parity of treatment is denied to ex-barge grain.

21. Grain is an agricultural product adapted to barge transportation. It is a bulk-loading commodity such as sulphur, coal,

scrap iron, steel and petroleum. It is a fungible commodity so that the mixing of grain of like grade and kind has no effect upon its transportation or distribution. It can be transported in barge tows equivalent to 80 loaded freight cars of 90,000 pounds each.

22. Barge transportation of grain during the present wartime conditions has peculiar significance in view of the fact that the railroads do not have sufficient facilities to handle the traffic. Petitioners herein are charged with the responsibility of "taking all appropriate steps to insure the efficient and proper distribution of the available supply of food." Any measure adopted by the railroads, with the permission of the Commission, that will have the effect of immobilizing water transportation facilities thereby preventing or discouraging the shipment of agricultural products, to wit, grain, is inimical to the war effort. It also impairs of "the national defense," as defined in the National Transportation Policy (54 Stat. L. 899, U. S. C. Title 49, Section 1).

23. The order of the Commission of February 13, 1945, is unlawful for the following reasons among others:

172 (a) The report upon which the order is based does not contain essential findings of fact showing that the circumstances and conditions surrounding the movement of ex-barge grain are different from those surrounding the transportation of ex-lake or ex-rail grain from the same or from different origins into Chicago destined for trans-shipment to the same destinations east thereof which would warrant penalty rates outbound for said ex-barge grain under Sections 1 (4), 1 (5) (a), 1 (6), 2, 3 (1), and 3 (4) of the Interstate Commerce Act.

24. The Commission has violated the National Transportation Policy in failing to recognize and preserve the inherent advantages of water transportation of grain, and as a consequence has:

(a) Imperiled the welfare of the barge lines;

(b) Deprived grain producers and shippers of lower cost transportation;

(c) Weakened the ability of barge lines to contribute to the "national defense."

173 25. In prescribing rates for the movement of ex-barge grain in excess of those covering transportation of ex-lake and ex-rail grain to similar destinations, the Commission has failed to observe the rule of rate making stated in Section 15 (a) (2) of the Interstate Commerce Act.

26. There is no evidence of record upon which the Commission could find:

When local rail rate on grain is (cents):

13–14.

15–22.

23–24.
25–26.
27–28.
28.5 and over.

Differential, ex-barge under local rail rate, shall be (cents):

1.
2.
3.
4.
6.
5.5.

and, therefore, said order of February 13, 1945, is void.

Wherefore, Petitioners pray:

That a preliminary injunction be entered enjoining and setting aside the operation and effect of that part of said order of the Commission of February 13, 1945, which authorizes the imposition of reshipping rates on ex-barge grain based on the schedule in Paragraph 26 hereof and to sustain that portion of the Commission's Order which requires cancellation of the schedules proposed by said eastern railroads, until final determination of this cause, and that upon final hearing herein, a decree be entered perpetually enjoining and setting aside the operation and effect of said order in the foregoing particulars, and

174 That Petitioners have such other and further relief in the premises as the nature of the case shall require and as this Court shall deem proper.

This 27 day of June 1945.

ROBERT H. SHIELDS,
Solicitor, United States,
Department of Agriculture.
CHARLES B. NUTTING,
Associate Solicitor,
United States Department of Agriculture.
By James K. Knudson,
JAMES K. KNUDSON,
Principal Attorney, United States Department of Agriculture, Room 1328, South Bldg., Washington, D. C.,
Attorneys for Petitioners.

James A. Doyle,
JAMES A. DOYLE,
Regional Attorney,
United States Department of Agriculture,
208 South LaSalle Street, Chicago 4, Illinois.

176 In the District Court of the United States
Civil Action File No. 45–C–865

[Title omitted]

Intervention of Interstate Commerce Commission

Filed Aug. 2, 1945

Now comes the Interstate Commerce Commission, pursuant to the provisions of Section 212 of the Judicial Code, 36 Stat. 1150 (U. S. C. Supp. VI, Title 28, Sec. 45a), and hereby intervenes as party defendant in the above-entitled cause, and enters the appearance of the undersigned as its counsel.

DANIEL W. KNOWLTON,
Chief Counsel,
DANIEL H. KUNKEL,
Attorney,
For Interstate Commerce Commission.

177 In the District Court of the United States
Civil Action File No. 45–C–865

[Title omitted]

Answer of the Interstate Commerce Commission

Filed Aug. 2, 1945

Now comes the Interstate Commerce Commission, intervening defendant herein, by its counsel, and in answer to the allegations of the complaint respectfully represents:

1. The Commission admits the jurisdiction of this Court over the parties and subject matter of this suit.

2. The Commission admits the procedural facts set forth in the complaint.

3. The Commission denies each and every allegation of error set forth in the complaint.

4. In further answer, the Commission avers that in the proceeding referred to in said complaint the plaintiff herein as well as other parties of record were accorded a full and fair hearing as set out by the Interstate Commerce Act; that in said hearing a large amount of testimony and other evidence bearing upon the issues involved were submitted to the Commission for consideration; that in said proceeding questions relating to said issues
178 were submitted to the Commission for determination, including questions raised by the plaintiff in this cause, whereupon the Commission determined said issues and entered and served upon the parties to said proceeding its report and order complained of herein; that said report and order contains the Commission's findings of fact and conclusions thereon upon the evidence aforesaid.

The Commission further alleges that each and all findings and conclusions in said report were and are supported by substantial evidence.

The Commission further alleges that in making said report of February 13, 1945, it considered and weighed carefully in the light of its own knowledge and experience all of the facts and conditions called to its attention by all the parties to the proceeding included questions and matters covered by the allegations of the complaint herein.

The Commission further alleges that said report and order of February 13, 1945, was not made or entered either arbitrarily or capriciously or contrary to the relevant evidence or without evidence to support them; that in making said report and order the Commission did not exceed the authority duly conferred upon it, and the commission denies each and every allegation to the contrary contained in the complaint herein.

Except as herein expressly admitted, the Commission denies the truth of each and every allegation contained in the complaint in so far as they conflict with the allegations herein or with statements or conclusions contained in said report and order of February 13, 1945, to which reference is hereby made.

Wherefore, The Commission prays that the complaint
179 be dismissed.

INTERSTATE COMMERCE COMMISSION,
By DANIEL H. KUNKEL, *Attorney.*

DANIEL W. KNOWLTON,
Chief Counsel,
Of counsel.

CERTIFICATE OF SERVICE

I hereby certify that I served copies of the within Intervention and Answer of the Interstate Commerce Commission by mailing the same to each of the counsel of record in this cause as follows: Edward B. Hayes, Esq., 2400 Field Building, Chicago, Ill. Edward Dumbauld, Esq., Special Assistant to the Attorney General, Department of Justice, Washington 25, D. C.

July 31, 1945.

DANIEL H. KUNKEL, *Attorney.*

181 In the District Court of the United States

Civil Action File No. 45–C–866

[Title omitted.]

Answer of the Interstate Commerce Commission.

Filed Aug. 2, 1945

Now comes the Interstate Commerce Commission, one of the defendants herein, by its counsel, and in answer to the allegations of the complaint respectfully represents:

1. The Commission admits the jurisdiction of this Court over the parties and subject matter of this suit.

2. The Commission admits the procedural facts set forth in the complaint.

3. The Commission denies each and every allegation of error set forth in the complaint.

4. In further answer, the Commission avers that in the proceeding referred to in said complaint the plaintiff herein as well as other parties of record were accorded a full and fair hearing as set out by the Interstate Commerce Act; that in said hearing a large amount of testimony and other evidence bearing upon the issues involved were submitted to the Commission for consideration; that in said proceeding questions relating to said

182 issues were submitted to the Commission for determination, including questions raised by the plaintiff in this cause; whereupon the Commission determined said issues and entered and served upon the parties to said proceeding its report and order complained of herein; that said report and order contains the Commission's findings of fact and conclusions thereon upon the evidence aforesaid.

The Commission further alleges that each and all said findings and conclusions in said report were and are supported by substantial evidence.

The Commission further alleges that in making said report of February 13, 1945, it considered and weighed carefully in the light of its own knowledge and experience all of the facts and conditions called to its attention by all of the parties to the proceeding including questions and matters covered by the allegations of the complaint herein.

The Commission further alleges that said report and order of February 13, 1945, was not made or entered either arbitrarily or capriciously or contrary to the relevant evidence or without evidence to support them; that in making said report and order the

Commission did not exceed the authority duly conferred upon it, and the Commission denies each and every allegation to the contrary contained in the complaint herein.

Except as herein expressly admitted, the Commission denies the truth of each and every allegation contained in the complaint in so far as they conflict with the allegations herein or with statements or conclusions contained in said report and order of February 13, 1945, to which reference is hereby made.

Wherefore, the Commission prays that the complaint be
183 dismissed.

INTERSTATE COMMERCE COMMISSION,
By Daniel H. Kunkel,
DANIEL H. KUNKEL, *Attorney.*

DANIEL W. KNOWLTON,
Chief Counsel,
Of Counsel.

CERTIFICATE OF SERVICE

I hereby certify that I served copies of the within Intervention and Answer of the Interstate Commerce Commission by mailing the same to each of the counsel of record in this cause as following: Walter, Burchmore & Belnap, Luther M. Walter, Esq., 2106 Field Building, Chicago 3, Ill. Edward Dumbauld, Esq., Special Assistant to the Attorney General, Department of Justice, Washington 25, D. C.

July 31, 1945.

Daniel H. Kunkel,
DANIEL H. KUNKEL, *Attorney.*

185 In the District Court of the United States

Civil Action File No. 45–C–1020

[Title omitted.]

Intervention of Interstate Commerce Commission

Filed Aug. 2, 1945

Now comes the Interstate Commerce Commission, pursuant to the provisions of Section 212 of the Judicial Code, 36 Stat. 1150 (U. S. C. Supp. VI, Title 28, Sec. 45a), and hereby intervenes as

party defendant in the above-entitled cause, and enters the appearance of the undersigned as its counsel.

Daniel W. Knowlton,
DANIEL W. KNOWLTON,
Chief Counsel,
Daniel H. Kunkel,
DANIEL H. KUNKEL,
Attorney,
For Interstate Commerce Commission.

186 In the District Court of the United States

Civil Action File No. 45–C–1020

[Title omitted.]

Answer of the Interstate Commerce Commission

Filed Aug. 2, 1945

Now comes the Interstate Commerce Commission, intervening defendant herein, by its counsel, and in answer to the allegations of the complaint respectfully represents:

1. The Commission admits the jurisdiction of this Court over the parties and subject matter of this suit.

2. The Commission admits the procedural facts set forth in the complaint.

3. The Commission denies each and every allegation of error set forth in the complaint.

4. In further answer, the Commission avers that in the proceeding referred to in said complaint the plaintiffs herein as well as other parties of record were accorded a full and fair hearing as set out by the Interstate Commerce Act; that in said hearing a large amount of testimony and other evidence bearing upon the issues involved were submitted to the Commission for consideration; that in said proceeding questions relating to said issues
187 were submitted to the Commission for determination, including questions raised by the plaintiffs in this cause, whereupon the Commission determined said issues and entered and served upon the parties to said proceeding its report and order complained of herein; that said report and order contains the Commission's findings of fact and conclusions thereon upon the evidence aforesaid.

The Commission further alleges that each and all said findings and conclusions in said report were and are supported by substantial evidence.

The Commission further alleges that in making said report of February 13, 1945, it considered and weighed carefully in the light of its own knowledge and experience all of the facts and conditions called to its attention by all of the parties to the proceeding including questions and matters covered by the allegations of the complaint herein.

The Commission further alleges that said report and order of February 13, 1945, was not made or entered either arbitrarily or capriciously or contrary to the relevant evidence or without evidence to support them; that in making said report and order the Commission did not exceed the authority duly conferred upon it, and the Commission denies each and every allegation to the contrary contained in the complaint herein.

Except as herein expressly admitted, the Commission denies the truth of each and every allegation contained in the complaint in so far as they conflict with the allegations herein or with statements or conclusions contained in said report and order of February 13, 1945, to which reference is hereby made.

Wherefore, The Commission prays that the complaint
188 be dismissed.

INTERSTATE COMMERCE COMMISSION,
Daniel H. Kunkel,
By DANIEL H. KUNKEL, *Attorney.*

DANIEL W. KNOWLTON,
Chief Counsel,
Of Counsel.

CERTIFICATE OF SERVICE

I hereby certify that I served copies of the within Intervention and Answer of the Interstate Commerce Commission by mailing the same to each of the counsel of record in this cause as follows: Robert H. Shields, Esq., and James K. Knudson, Esq., United States Department of Agriculture, Washington, D. C. Edward Dumbauld, Esq., Special Assistant to the Attorney General, Department of Justice, Washington 25, D. C.

July 31, 1945.

Daniel H. Kunkel,
DANIEL H. KUNKEL, *Attorney.*

190 In the District Court of the United States

Civil Action No. 45–C–865

[Title omitted.]

Answer of the United States of America

Filed June 27, 1945

Now comes the United States of America, defendant in the above-styled action, and for answer to the complaint herein admits each and all of the allegations in the said complaint contained; and that the relief prayed for should be granted by this Court, and that the order of the Interstate Commerce Commission assailed in the said action (being the said Commission's order of February 13, 1945, in investigation and suspension docket No. 4718, including the report of the same date made a part thereof by reference), should be set aside, in so far as it undertakes to authorize the establishment of rates in conformity with the findings contained in the said report (but not in so far as it requires the cancellation of the rate schedules heretofore filed by the carriers, but the effective dates of which has been postponed).

Wherefore, this defendant prays that the relief prayed for by plaintiffs be granted by this Court, and that the aforesaid order of the Interstate Commerce Commission, as set forth above, be set aside as erroneous, arbitrary, unsupported by substantial evidence, and contrary to law.

191 Edward Dumbauld,
EDWARD DUMBAULD,
David O. Mathews,
DAVID O. MATHEWS,
Special Assistants to the Attorney General,
Department of Justice, Washington 25, D. C.

WENDELL BERGE,
Assistant Attorney General.
J. ALBERT WOLL,
United States Attorney.

I certify that copies of the foregoing answer were this day mailed to the following persons: Edward B. Hayes, Esq., 2400 Field Building, Chicago, Illinois. Daniel H. Kunkel, Esq., Interstate Commerce Commission, Washington 25, D. C.

This — day of June, 1945.

EDWARD DUMBAULD,
Special Assistant to the Attorney General.

198 In the District Court of the United States
Civil Action No. 45–C–866.

[Title omitted.]

Answer of the United States of America

Filed June 27, 1945

Now comes the United States of America, defendant in the above-styled action, and for answer to the complaint herein admits each and all of the allegations in the said complaint contained, and that the relief prayed for should be granted by this Court, and that the order of the Interstate Commerce Commission assailed in the said action (being the said Commission's order of February 13, 1945, in investigation and suspension docket No. 4718, including the report of the same date made a part thereof by reference), should be set aside, in so far as it undertakes to authorize the establishment of rates in conformity with the findings contained in the said report (but not in so far as it requires the cancellation of the rate schedules heretofore filed by the carriers, but the effective date of which has been postponed).

Wherefore, this defendant prays that the relief prayed for by plaintiffs be granted by this Court, and that the aforesaid order of the Interstate Commerce Commission, as set forth above, be set aside as erroneous, arbitrary, unsupported by substantial evidence, and contrary to law.

194 Edward Dumbauld,
EDWARD DUMBAULD,
David O. Mathews,
DAVID O. MATHEWS,
Special Assistants to the Attorney General,
Department of Justice, Washington 25, D. C.

Wendell Berge,
WENDELL BERGE,
Assistant Attorney General.
J. Albert Woll,
J. ALBERT WOLL,
United States Attorney.

I certify that copies of the foregoing answer were this day mailed to the following persons: John S. Burchmore, Esq., Nuel D. Belnap, Esq., Luther M. Walter, Esq., 2106 Field Building, Chicago 3, Illinois. Daniel H. Kunkel, Esq., Interstate Commerce Commission, Washington 25, D. C.

This 22d day of June 1945.

Edward Dumbauld,
EDWARD DUMBAULD,
Special Assistant to the Attorney General.

Received a copy of the above answer this 27th day of June 1945.
NUEL D. BELNAP,
Attorney for Plaintiff.

196 In the District Court of the United States

Civil Action No. 45–C–1020

[Title omitted.]

Answer of the United States of America

Filed Aug. 4, 1945

Now comes the United States of America, defendant in the above-styled action, and for answer to the complaint herein admits each and all of the allegations in the said complaint contained, and that the relief prayed for should be granted by this Court, and that the order of the Interstate Commerce Commission assailed in the said action (being the said Commission's order of February 13, 1945, in investigation and suspension docket No. 4718, including the report of the same date made a part thereof by reference), should be set aside, insofar as it undertakes to authorize the establishment of rates in conformity with the findings contained in the said report (but not insofar as it requires the cancellation of the rate schedules heretofore filed by the carriers, but the effective date of which has been postponed).

Wherefore, this defendant prays that the relief prayed for by plaintiffs be granted by this Court, and that the aforesaid order of the Interstate Commerce Commission, as set forth above, be set aside as erroneous, arbitrary, unsupported by substantial evidence, and contrary to law.

197 Edward Dumbauld,
EDWARD DUMBAULD,
David O. Mathews,
DAVID O. MATHEWS,
Special Assistants to the Attorney General,
Department of Justice, Washington 25, D. C.

WENDELL BERGE,
Assistant Attorney General.
J. ALBERT WOLL,
United States Attorney.

I certify that copies of the foregoing answer were this day mailed to the following persons: Robert H. Shields, Solicitor; Charles B. Nutting, Associate Solicitor; James K. Knudson, Principal Attorney, United States Department of Agriculture, Wash-

ington 25, D. C.; James A. Doyle, Regional Attorney, United States Department of Agriculture, 208 South La Salle Street, Chicago 4, Illinois; Daniel H. Kunkel, Esq., Interstate Commerce Commission, Washington 25, D. C.

This 27th day of July 1945.

Edward Dumbauld,
EDWARD DUMBAULD,
Special Assistant to the Attorney General.

199 In the District Court of the United States

Civil Action File No. 45–C–1020

Civil Action File No. 45–C–865

Civil Action File No. 45–C–866

[Titles omitted.]

Motion for temporary restraining order

Filed Oct. 4, 1945

Comes now the Secretary of Agriculture, a plaintiff in the above entitled consolidated cause, by its attorney, and moves this court to enter an order temporarily restraining the operation and effect of the order of the Interstate Commerce Commission entered on February 13, 1945, in Investigation and Suspension Docket No. 4718, Grain Proportionals, Ex-barge to Official Territory (which order is reproduced as Appendix "A" in the complaints
200 docketed as Civil Actions File 45–C–865 and 45–C–866 in the foregoing consolidated cases), insofar as said order authorizes and prescribes lawful or proportional or reshipping rates for the transportation of ex-barge grain from Chicago, Illinois, to interstate destinations to the east thereof that is higher than the lawful or proportional or reshipping rates presently in effect on said traffic and higher than the lawful or proportional or reshipping rates contemporaneously provided on ex-rail and ex-lake grain from and to the same points; and temporarily restraining said Interstate Commerce Commission pending the hearing and determination of this cause (and only for the period or periods prescribed by law and the statute in such case made and provided as may be needful to preserve the status quo pending the final decision of the court) from permitting to become effective any tariff or tariff supplements that have been or may be published in conformity with said order (including especially Sup-

plement 133 to Agent B. T. Jones' I. C. C. 3356 and Supplement 27 to Agent B. T. Jones' I. C. C. 3363 issued June 1, 1945, filed with the Interstate Commerce Commission to take effect October 5, 1945); and directing said Interstate Commerce Commission forthwith to take all steps necessary to facilitate the restraint so imposed pending the hearing and determination of this cause, including the suspension of said tariffs, and for such further relief pendente lite as the community of interest represented by the plaintiff herein may appear entitled to receive.

In support of the foregoing motion plaintiff states:

1. Unless the relief pendente lite hereinabove provided for is granted, the farming community for which plaintiff speaks will suffer irreparable injury.

201 2. The motion as filed is based upon a formal refusal of the Interstate Commerce Commission in conference assembled in Washington, D. C., on October 1, 1945, to act affirmatively upon the request of this court and the plaintiffs in the consolidated cases above captioned to suspend the tariffs in issue and *and* the following proper statutory notice duly filed with the Interstate Commerce Commission and the Attorney General on October 1, 1945, in Washington, D. C., by the undersigned as Attorney for the Secretary of Agriculture and under a power of attorney for the other plaintiffs that the application contained herein would be made.

ROBERT H. SHIELDS,
Solicitor,
United States Department of Agriculture,
By James K. Knudson,
JAMES K. KNUDSON,
Principal Attorney,
United States Department of Agriculture,
Attorneys for Plaintiffs.

202 In the District Court of the United States

Civil Action File No. 45–C–1020

Civil Action File No. 45–C–865

Civil Action File No. 45–C–866

[Titles omitted.]

Affidavit of James K. Knudson

James K. Knudson, being first duly sworn, deposes and says that he is of legal age; that he is principal attorney in the Solicitor's Office of the United States Department of Agriculture; that he represents the Secretary of Agriculture in this proceeding and

that the following facts are true to the best of his information, knowledge and belief based upon his years of association with this proceeding and with the farming community for which he speaks:

1. Upwards of 13,000,000 bushels of grain have reached Chicago by barge annually for the last five years.

2. The grain crop this year forecasts a heavy movement to Chicago by barge if the rate situation remains unchanged.

203 3. Grain, a bulk loading commodity is admirably adapted to barge movement. A tow of four barges loaded 30,000 bushels each which represents approximately eighty freight cars of 90,000 pounds. With the present shortage of freight cars for moving grain, barge transportation becomes increasingly important.

4. When grain is brought into Chicago whether by rail, lake or river or in any other manner it reaches a common value. If, therefore, farmers can save freight on the inbound haul they thereby receive a higher net price for their grain. If, however, inbound barge hauls are penalized by refusal of railroads to ship barge grain to eastern destinations on rates equal to rail brought to Chicago by lake or rail, the farmers who would otherwise use the barge line for inbound hauls will be forced either to use the rails at higher rates or absorb the penalty on the outbound haul. This penalty will be levied from October 5 forward unless the Interstate Commerce Commission is required to suspend the tariffs prescribing the penalty.

5. The imposition of the penalty will directly affect 2,115 farmer-shareholders in a farm cooperative maintaining river loading facilities along the Illinois Waterway. Instead of trucking their grain to river elevators where it would be eligible for low barge rates to Chicago, they would be required by economic circumstances to ship their grain by rail to Chicago.

6. The diminution of the movement of grain to riverbank facilities would impair the value and the profits of such facilities, many of which are owned or controlled directly by farmers to a vanishing point.

204 7. The loan values on exbarge grain based on Government loans to the farmers will decline further at the moment exbarge grain is disallowed the advantage of equal rates.

8. A point will be reached in the diminution of barge grain volume where the barge lines themselves will have to raise their rates because of the decrease in volume with resultant detriment to the farmers using this facility.

9. All of the foregoing factual statements are adequately supported in the record of the rate proceeding before the Interstate

Commerce Commission in addition to their being within the knowledge of your Affiant herein.

JAMES K. KNUDSON.

Subscribed and sworn to before me this 4th day of October 1945.

[SEAL] JAMES J. LEWIS, *Notary Public.*

206 In the United States District Court

No. 45–C–865
No. 45–C–866
No. 45–C–1020

[Titles omitted.]

Transcript of proceedings

Filed Oct. 26, 1945

Transcript of proceedings had and evidence taken in the above entitled causes before the Honorable Evan A. Evans, Judge of the United States Circuit Court of Appeals for the Seventh
207 Circuit, and the Honorable Michael L. Igoe and Honorable Walter J. LaBuy, Judges of the United States District Court, in Court Room Number 627, United States Court House, Chicago, Illinois, on Thursday, the 4th day of October, A. D. 1945, at 2:00 o'clock p. m.

Present: Messrs. Lord, Bissell & Kadyk, by Mr. Edward B. Hayes, appeared for A. L. Mechling Barge Line, Plaintiff. Mr. Luther M. Walter, appeared for Inland Waterways Corporation, Cross-Complainant. Mr. James K. Knudson, appeared for the Department of Agriculture, Cross-Plaintiff. Mr. Edward W. Knowlton, appeared for Interstate Commerce Commission, Defendant. Mr. J. Albert Woll, United States District Attorney, by Mr. Kenneth S. Nathan, appeared for the United States of America, Defendant.

208 The CLERK. 45–C–865 consolidated; Mechling Barge Line, et al. v. United States of America, for hearing.

Mr. HAYES. May it please the Court, there were presented this morning certain applications for temporary relief—I am just advised that counsel representing the Interstate Commerce Commission has stepped out of the court room for a moment. May I await his return?

Judge EVANS. Tell him to come back in.

Mr. HAYES. May I introduce Mr. Knowlton, counsel for the Interstate Commerce Commission?

Judge EVANS. Yes; we know Mr. Knowlton.

Mr. KNOWLTON. I apologize for being late.

Judge EVANS. I want to know first who the parties are and who they represent, who do you all represent?

Mr. HAYES. I represent the Plaintiff Petitioner, A. L. Mechling Barge Line.

The Tuland Waterways Corporation is represented by Mr. Luther M. Walter.

The Department of Agriculture, Secretary of Agriculture, in its functions in connection with that Department and as the War Food Administrator, likewise Plaintiff Petitioner, is represented by Mr. James K. Knudson, principal attorney for the Department of Agriculture.

209 The Interstate Commerce Commission, as your Honor is already advised, is represented by Mr. Knowlton.

Judge EVANS. Now, how long are you people going to take to present this question? And who is going to do it?

Mr. HAYES. I am going to make a brief presentation of the whole situation, as brief as is possible. Mr. Walter will present the situation from the standpoint of irreparable injury to his client. And Mr. Knudson will present the situation from the standpoint of irreparable injury to the public interests with which he is charged under the statute in this kind of a proceeding.

There is a little evidence to be taken, your Honor.

Judge EVANS. There is no evidence?

Mr. HAYES. There is a little evidence.

Judge EVANS. Well, perhaps that ought to be taken in the beginning here before we have any argument.

Mr. HAYES. Yes, sir. In order to shorten the proceeding, I have spoken to both—I beg your pardon, Mr. Nathan. Mr. Nathan represents the United States and the Attorney General. I apologize.

I have spoken to Mr. Nathan and also to Mr. Knowlton, and they have agreed that the statements of the witnesses attached to the applications may be taken and received as their

210 evidence. I have advised those gentlemen the affiants are present in court for cross-examination if they desire to cross-examine. They have both stated that they do not care to cross-examine.

Therefore, I offer as the testimony of those respective witnesses, the statements that they have made under oath in connection with the applications on file.

Judge EVANS. Now, the United States and the Interstate Commerce Commisssion and the Secretary of Agriculture are all three represented here?

Mr. HAYES. They are, your Honor.

Judge EVANS. But they are not on the same side?

Mr. HAYES. No, your Honor.

Judge EVANS. On what sides are they?

Mr. HAYES. The Secretary of Agriculture is a plaintiff petitioner.

Judge EVANS. And the United States?

Mr. HAYES. The United States of America, which is a necessary defendant under the statute, the statutory defendant in fact, is a defendant. The United States has filed an answer in this proceeding. I do not know whether your Honors have read it or not. I presume you have.

There is an intervening defendant in two of the cases, the Interstate Commerce Commission, which was likewise made a defendant in the third of the consolidated causes.

211 The terms of the answer of the United States of America, as I read them, admit the averments of the complaint. Such answers have been filed, of course, in all the cases and ask that relief as prayed for be granted.

The only adverse position to the relief prayed is taken by the Interstate Commerce Commission.

Judge EVANS. It is the order of the Interstate Commerce Commission which is being assailed?

Mr. HAYES. That is correct, your Honor.

Judge EVANS. Now, then, do the three parties stipulate and agree that one record can be made in all three cases, or do they have to be separate with one record in each case?

Mr. HAYES. There has been an order of consolidation, your Honor.

Judge EVANS. I see. Now, go ahead.

Mr. HAYES. I have made an offer as I described of the evidence of the several witnesses, J. L. McClintock, F. A. Mechlin, Norman C. Harris, and M. C. Knudson, and pursuant to the agreement which I described, I ask that they be received as their testimony in this hearing.

Judge EVANS. Any objection? It is received.

Mr. HAYNES. These witnesses are present and are tendered for cross-examination.

212 I understand that there is no desire to cross examine them by either of counsel for these defendants.

I offer in evidence certified copies of two supplements to tariffs of the eastern railroads for the carriage of grain reshipped from Chicago to the east, which will become effective tomorrow, and both of which state on the face "Issued in conformity with findings of the Interstate Commerce Commission in I & S Docket 4718, as decided February 13, 1945," which is the order here under attack.

I offer these as Exhibits A and A–1; A being supplement 133 and A–1 supplement number 27 of the tariffs respectively therein named, as evidence in this hearing.

Judge EVANS. Received, no objection.

(Said documents, so offered and received in evidence, were marked "Plaintiff's Exhibits A and A–1," respectively.)

Mr. HAYES. I do no know whether counsel for defendants, or either of them, have any evidence to offer or not.

Mr. KNOWLTON. The Commission has no evidence to offer.

Mr. NATHAN. The United States has no edivence offer.

213 Judge EVANS. Very well; testimony closed.

Mr. HAYES. If the Court please, this is an application pendente lite for relief, pending the proceeding to preserve the status quo pending the determination of the legal correctness of the action of the Interstate Commerce Commission pursuant to the Urgent Deficiencies Act, which is 28 U. S. Code Annotated, Section 47.

I presume it is unnecessary for me to read the text of the statute. I have it here.

Usually, of course, as this Court knows, applications to preserve the status quo pending the action of this Court when called to the attention of the Interstate Commerce Commission, results in action of its own motion to preserve it without the necessity of any interlocutory relief.

It appears from the affidavits filed, and I believe from the communication which the Court has received from the Interstate Commerce Commission, that the Commission in this case seemed to prefer that there should be a temporary relief which is authorized by the Act.

The situation very briefly is this, it goes back beyond 1939, earlier than that, and all the eastern railroads transport grain out of Chicago to the east and make the same charge for

214 their services without regard to whether the grain, which is a fungible commodity, arrived in Chicago and came to their hands by means of the connecting barge carriers, the connecting rail lines, or by lake vessel over the lakes, in 1939, for the purpose, as stated by their representative before the Commission, and I quote him, "of driving the barge traffic off the water and back on the rails where it belongs," he said; the railroads propose to charge 8½ cents more for their service in transporting east the grain that had arrived in Chicago by barge than they charge for this service on lake-arrived or rail-arrived grain.

The Interstate Commerce Commission suspended that proposal and investigated that proposal, and determined in the end that it would not interfere with that proposal but would permit it to go into effect.

That order was reviewed by this Court and enjoined by this Court. There was an appeal to the Supreme Court of the United States.

The Supreme Court of the United States held that contrary to the supposition of the parties, and contrary to the supposition of this Court at the time, the Interstate Commerce Commission in permitting that rate to go into effect, that 8½-cent penalty, had not approved it.

215 The Court expressly stated that the rates stood without the approval either of the Interstate Commerce Commission or of the Supreme Court of the United States. I have the text of that decision here but your Honors are unquestionably familiar with it.

The Court dwelled at length upon the statement of the Commission in its order permitting that penalty to go into effect, that it might some day hold a proceeding to determine what rates ought to be applied for the transportation of ex-barge grain out of Chicago to the east.

In view of the fact that that statement occurred in the Commission's report and also in view of the fact that the Supreme Court had dwelt upon it, the barge carriers and certain shippers filed applications before the Commission asking it to exercise its powers to prescribe the level of rates that ought to prevail for the transportation of that ex-barge grain to the east. That power is granted to the Commission by Section 611b of the Interstate Commerce Act, as Mr. Knowlton will agree.

Thereupon, the Commission entered an order for a further hearing. It had been requested that the record already made before the Commission be kept available as well as any
216 further record that might be made. That request was granted and I will read, if I may—there seems to be some apparent lack of agreement between counsel for the Commission and ourselves as to the issues that were before the Commission.

Judge Evans. Have you got a copy of that opinion now here, of the Supreme Court opinion?

Mr. Hayes. Yes, sir; I have [handing document to the Court]. I will read, if I may, some of the language from that opinion.

"This form of finding"—

that is in that order that was previously under review here—

"has been held by the Commission not to constitute an approval or a prescription of the rates under suspension. Since the Commission refused to approve or prescribe them, they stand only as carrier-made rates which, under the Commission's decisions, leaves them open to possible recovery of reparations. Like the Commission, we also refrain from approving or prescribing them."

Judge Evans. Go on with the history of the proceedings.

Mr. HAYES. Yes, sir. The order entered by the Commission fixing the further hearing here, reads

217 "It appearing, that in the report of the Commission on reconsideration in the above entitled proceeding, the Commission said that 'In a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations.'

"It further appearing, That motions requesting leave to file petitions for rehearing and for an order fixing specific reshipping rates on ex-barge grain, together with such petitions, have been filed by"—

and then naming the parties—

"and that said petitioners request rehearing for the purpose of presenting evidence which will permit the Commission to prescribe and fix reshipping rates on ex-barge grain predicated on the particular circumstances and conditions which surround its transportation;

"It further appearing, That the said petitions in effect are complaints which bring in issue the lawfulness of rates applicable on the through movement of the traffic considered in the instant proceeding; and that the record therein may be of assistance in determination of the issues presented by said petitions.

218 "And it further appearing, That the said petitions and replies thereto have been considered in the light of the record herein and the opinion of the Supreme Court of the United States in"—

naming the opinion in the case from which I just read to your Honors—

"It is ordered, That this proceeding be, and it is hereby, reopened for further hearing for the purpose of receiving evidence (1) on the questions of whether or not reshipping or proportional rates should be prescribed for interstate transportation by railroad of ex-barge grain, in carloads, from Chicago, Illinois, and other related points of origin embraced in the instant proceeding to eastern destinations considered therein, and if so, to determine what would be reasonable and otherwise lawful proportional or reshipping rates for application on such traffic, and (2) to determine what, if any,"

joint rates should be prescribed. They did not prescribe any joint rates.

"And it is further ordered, That this proceeding be, and it is hereby assigned for further hearing,"

and so forth.

219 Pursuant to the order hearings were held and were held extensively, and upon those hearings and the record formally made an order was entered.

The order is in the form of the usual form of a report and an ordering part. The ordering part of this is on page 72 of the complaint before this Court, of the A. L. Mechling Barge Line, refers to the report part and says:

"Which report, together with said reports of July 31, and December 1, 1941, are hereby referred to and made a part hereof,"

namely, of the order.

I read from the portion of the order so incorporated, and this is on page 72 of the complaint before this Court by the A. L. Mechling Barge Line—no, it is not; it is 53, the part I want to read from. I already read from the other page.

"We further find that reasonable and otherwise lawful proportional rates for interstate transportation by rail of ex-barge grain in carloads from Chicago, Illinois, to eastern destinations, considered herein under Sections 1, 2, 31, 34, 611 b,"

which is the section giving the Commission power to fix and prescribe proportional rates of rail-water traffic—

"and 15A2 of the Interstate Commerce Act discussed with a view,"

220 and so forth,

"will be those made differential under local rail rates which are or may be hereafter currently maintained from Chicago as set forth below, with the customary differentials on products in export traffic which are no less favorable to ex-barge traffic and no more favorable to ex-rail and ex-lake traffic than represented by the relation between such prescribed ex-barge proportionals on the one hand, and the present ex-rail and ex-lake proportionals specifically on the other hand."

Then follows a heading, schedules with headings. Two columns, one with "In re: Local Rail Rates."

Judge Evans. Tell me more about it. I don't quite understand the last three lines of that. What does it mean when it says: "no more favorable than is represented by the relation between such prescribed ex-barge proportionals on the one hand, and the present ex-rail and ex-lake proportionals specifically on the other hand?"

Mr. Hayes. Yes. The answer, if your Honor please, is this: From Chicago to the east there is on the transportation of grain that is moved into Chicago, prior transportation movement and proportional rate level which proportional rate level is

221 lower than the rate level which contemporaneously applies on grain which has had no antecedent transportation up to Chicago. And what the Commission did in form was to fix

proportional rates on the ex-barge grain that were lower than the local rail rates, but which were higher than the proportional rail rates. And, of course, so far as the local——

Judge EVANS. Now, just get to the grievance. The Interstate Commerce Commission's present order is more favorable to the water competition than those old rates?

Mr. HAYES. Indeed, yes, your Honor.

Judge EVANS. But it is not yet on an equal footing with the railroad, with the rates on shipments where the grain came from the west to Chicago and went on to New York?

Mr. HAYES. That is right, your Honor.

Judge EVANS. And that is the only point now in dispute, is it?

Mr. HAYES. Well, there is also the fact that it is not on an equal footing even with the rates which prevail on grain that comes off the lakes to Chicago. It is higher even than that.

Now, that is the situation, as my associate asks me to make plain, and I assume your Honor has it in mind, that will
222 prevail if these tariffs become effective, then we will have that higher charge of 3 cents higher than the proportional rate on ex-barge grain than on the ex-rail and ex-lake grain. At the present time, and for many years heretofore, those rates are on the same level. I assumed that was clear to the Court.

Do I fully answer your question?

Judge EVANS. Yes. I was just kind of wondering what the percentage is relatively, or what the situation is in reference to this order as compared to the old order.

Mr. HAYES. The old order, to put it very briefly, permitted to go into effect an 8½ cent penalty on ex-barge grain to eastern destinations. This order permits to go into effect a 3-cent penalty. When I say 8½ and 3, I mean per hundred pounds on ex-barge grain, a uniform penalty put on to all New England and eastern trunk-line destinations. And also permits——

Judge EVANS. The last time, under the 8½ cents, you endeavored to secure an injunction prohibiting that to be done. You got it here but you lost it in the Supreme Court. How do you expect to get it back? On what ground?

Mr. HAYES. On this ground, your Honor: If the order of the Interstate Commerce Commission had approved or prescribed an 8½ cent penalty, then the action of the Supreme Court
223 would have been just the same as the action of your Honors here. The point and gist of the decision of the Supreme Court is that the Commission had not approved and prescribed any rate whatever.

Judge EVANS. Do you agree to that, Counsel for the Interstate Commerce Commission?

Mr. KNOWLTON. The Supreme Court sustained the validity of the order but I think the Commission felt it had the power——

Judge EVANS. I understand they could, but do you agree that the Supreme Court's decision did not sustain the validity of your order?

Mr. KNOWLTON. It did sustain the validity of the order.

Judge EVANS. He says all they did was to say that you had jurisdiction but had not approved of the order.

Mr. HAYES. Approved of the rate.

Judge EVANS. Approved of the rate, and therefore they held under those circumstances that there could not be any modification of your order.

Mr. KNOWLTON. The Commission held that the rates were not unlawful, but it also said that on a fuller record it might arrive at different and lower proportionals.

Judge EVANS. And you did that on further hearing.

Mr. KNOWLTON. Yes, on the second hearing.

224 Judge EVANS. Now, the point I am trying to get at is whether it is agreed that the order of the Interstate Commerce Commission made at the present time may be enjoined by us, notwithstanding the proceedings before the Court on the previous trial or hearing? In other words, does the decision of the Supreme Court constitute a holding that guides us in this case?

Mr. KNOWLTON. No, sir; I do not think so. I think you are entirely free so far as that is concerned.

Judge EVANS. We may be on the question of fact but on the question of law; does the Supreme Court go so far as to reverse us the last time and sustain the Interstate Commerce Commission because the Interstate Commerce Commission's ruling approved, or indirectly approved, of the rate which the railroads put in force and which was discriminatory against the water?

Mr. KNOWLTON. I think the Supreme Court's decision indicates that it would approve the action that the Commission took. It did not hold that the report was without adequate finding or that the order was without substantial evidence, but recognized that it was a suspension proceeding and that countless questions might arise in such proceeding and that to hold or sustain the District Court would practically make the Commission's suspension

225 authority a thing that would be very seldom exercised. But I think, your Honor, that the Commission and yourselves are just as free as if the court had held in effect and remanded the case for further evidence.

Mr. HAYES. Counsel for the Commission has indicated that he thinks the Supreme Court approved the action that the Commission took. May I read briefly——

Judge EVANS. Since he says it does not make any difference whether they indirectly approved it, and he says it does not enter into our consideration, we will proceed on that theory.

Mr. HAYES. They were quite explicit that the Commission did not directly or indirectly or in any way approve that 8½ cent rate.

Judge EVANS. Well, whether they did or not, they thought they did and I still think they did.

Mr. HAYES. Well, that is what we thought, too. But the point I am making is that the Supreme Court did not reverse this court on the premise that the Commission had approved that rate at all.

Judge EVANS. All right, proceed.

Mr. HAYES. Now, I have made plain that the authority of the Commission to prescribe these ex-barge rates is plain under 611 b, that on request to the Commission pursuant to its own
226 suggestion it might do that, and the Supreme Court indicates that it said it would, so that it should go ahead and do that, and the order of the Commission was it would set this hearing to do that. And that language of the order is that those rates are prescribed, and the heading is "Differential ex-barge rates under local rates," and so forth, indicating that it is mandatory language.

And also on page 51 there is another reference to the ex-barge rates herein prescribed, if I have that page number right. No, it is 41, not 51:

"This creates an unjustified disparity"—

they are talking about the 8½ cent rate—

"which will likewise be avoided by the proportional rates prescribed."

and so on, and the net result is,

"resulting in barge-rail combinations on this Cleveland,"

and so on.

In other words, what the Commission did was as I have described, but the Commission did not order that prescribed level to go into effect at any particular time. It just said it was going to prescribe, if it was asked to prescribe, it would enter an order saying it would prescribe it and by the terms of its order it did
227 prescribe it but it did not order it to go into effect any particular time. That perhaps would have been supererogation because it was an order permitting the railroad to charge a higher level of rates than they were then charging, and the railroads did file tariffs charging all the traffic would bear and what the Commission permitted. Those are the tariffs which have been introduced in evidence in this hearing.

I understand there has been some correspondence in which it has been suggested that this order did not do anything. It seems to me apparent from the history of the proceedings, as I have stated it, that this order does prescribe the level of ex-barge rates which shall be lawful for grain reshipped from Chicago, Illinois.

In the Columbia Broadcasting case—your Honors are undoubtedly familiar with it—the Supreme Court was confronted with a similar order. The orders of the Federal Communications Commission are subject to review under this same statute by a three-judge court; and the Federal Communications Commission had said that if the Columbia Broadcasting Company and any station licensed by it had in effect a contract extending over a certain period, that might be grounds for revocation of the license of the broadcasting company.

Thereafter the National Broadcasting Company, although
228 the order was not directed against it, and although no license had been suspended, brought an action for review of the order and asked that the court enjoin it. It was met with the argument that, "nobody has done anything to you yet. You were not made a target of this order and you will have to wait until the Federal Communications Commission passes on the question involving administrative discretion on whether or not they will revoke any license, and then come and make your complaint, that this announcement is just like a press release of the policy of the Federal Communications Commission."

The Supreme Court made very short work of that argument. It said among other things:

"The Commission's order is, we hold, a reviewable order and the appellant is free to seek review under Section 402a of the Urgent Deficiencies Act. It is not, therefore, as the court below seemed to think, improper substituting a different procedure in court from that which Congress has prescribed for the trial of like issues, so far as they may be raised on a review of the order denying the license, and such issues may likewise be"——

Judge EVANS. Don't you think, you know you fellows are
229 full of this subject and we are occupied by other things, I would kind of like to get a statement of the Interstate Commerce Commission, sort of giving specifically what its position is, what its concessions are, and then you can shoot at him after the thing is over, all of you.

Mr. HAYES. All right.

Judge EVANS. I would like to know just how far you are willing to go and what can be done, and on what theory you sustain the order, and so forth.

Mr. KNOWLTON. That is simply on the question of the restraining order, as I understand it, your Honor?

Judge EVANS. Well, I presume so, but generally speaking, if you haven't got any merit at all in the order, why, the restraining order would follow; and all we are concerned with right now is the restraining order.

Mr. KNOWLTON. Yes. I ask that because Mr. Kunkle, who is in charge of this case, had to go onto another case at Oklahoma City and I took this upon three days' notice, I just go notice on Sunday.

Judge EVANS. You know a lot more about it than I do.

Mr. KNOWLTON. While I have gone into the restraining order part, your Honor, pretty thoroughly, I haven't devoted much time to the merits.

Judge EVANS. You see, I would not want you to limit
230 yourself to technical objections to the restraining order rather than the merits. They are assailing your order and enjoining it. I want to know what is your theory of sustaining the order. I don't mean by that to be antagonistic to you; I just want to know what your theory is in sustaining it, and to make such concessions as you can so these gentlemen won't have to be arguing and enlightening us on a lot of things we really need enlightening on, but which if you admit are out of the case.

Mr. KNOWLTON. Well, so far as the validity of the order from the standpoint of findings and substantial evidence, good full evidence, proper criteria, our judgment is it is a sound order. In this case, from the standpoint of the railroads, as you know, the Commission's statutory period suspended the first rates and thereafter they were voluntarily suspended or postponed by the railroads through the first court cases, except for the period of injunction, and through the second proceeding which is the one involved here.

So that if the Commission's order is sound, and I think it is, I think it is fair, on these proportional rates, and I do not think from the standpoint of equity there is any necessity of restraining the order. The Commission's suspension power, as you know is
231 given to it in connection with the undertaking of investigations into the lawfulness of rates which are proposed. That is the reason it is given to it, but it may enter into an investigation of proposed rates and be of the view that they should not be suspended.

Now, of course, these rates are in somewhat different category from the entirely carrier-initiated rates, in that the Commission in this proceeding which was just held not only found that the proposed higher local rates were not lawful but it also found that certain rates would be lawful in its order. It did not require them to be filed. The nature of the schedule which was before it was a schedule filed by the railroads, the effect of which proposed higher locals because and for the reason that it was cancelling the

regular proportional rates in their application to this ex-barge grain outbound from Chicago, and those the Commission suspended. No, those the Commission's order cancelled after this last proceeding, and the effect of that was to further continue applying on the traffic the lower or standard proportional rates.

Now, of course, taking that order, if that were restrained by the Court that would not accomplish the purpose, the plaintiff's purpose. They have now got the standard proportionals. The proposed increase to the higher local was found unlawful
232 and ordered cancelled without prejudice, and the Commission states in the report that action was without prejudice to the filing of the new rates which it had found to be lawful. It did not order them in, and just what the status of that without prejudice clause is, or the statement, is important here.

But, in any event, the point is they are not quite like carrier-initiated rates but they could have been protested, that kind of rate is protested.

Now, the Commission on its own initiative would not be expected, since it has just been through a hearing and found that these rates would be lawful when they were filed, it would not likely have reason for suspending them because the suspension, as I have said, is in connection with an investigation into the lawfulness of the rates suspended. If they had been protested, it might be that reasonable grounds would have been disclosed to further investigate their lawfulness, and therefore clothe the Commission with authority to suspend, but no protests were filed.

So that my principal interest, at least the Commission's reason for appearing here and opposing the application for the restraining order is one concerning its administrative authority, let us say, and principally because the plaintiffs have neglected to
233 join the railroads as defendants, and now ask the Court to order the Commission to suspend those rates filed and published by the railroads.

But first off, I want to refer again to the order whose operation they ask be restrained. That, as I say, was an order which had the effect of proposing higher local rates because it proposed the cancellation of the lower proportionals in their application to this traffic. So that when it was ordered cancelled, the effect was not only to deny the increase to the local but was to further continue, as had been for all this long time, the standard proportional rates.

Now, as I have said just a minute ago, for the Court to suspend that simply would not accomplish the plaintiffs' purpose, but they say that the Commission's action by its statement that its action was without prejudice, that its order was without prejudice to the filing of the new rates that it had authorized that it found lawful, they say that was an authorization of the rates.

I do not think that this is so in the sense of a formal order of authorization. However, and moreover, even assuming that it is an authorization that can be restrained, the restraining order in order to accomplish its purpose must prevent the new rates
234 from becoming effective, and it is because of this presumably and because the railroads are not made defendants that the plaintiffs ask that the Court order the Commission to suspend the railroads' rates, but by doing this they ask the Court to exceed its authority, for the Commission's suspension power is one of discretion. And, moreover, as I said, it is not a power apart from its entering into an investigation into the lawfulness of the rates which are suspended.

Now, the Commission had no reason, as I say, that was apparent on its own initiative to suspend those rates, and there were no protests calling anything to its attention, and therefore it might be said because of its own judgment that it was powerless to suspend. But, in any event, both the entering into the investigation and the suspension in connection with the investigation, or the nonsuspending, are very clearly shown by the decisions of the Supreme Court and the lower court to be discretionary and something exclusively for the Commission, and therefore my chief point and my chief reason in opposing the application for the restraining order is that they ask this Court to infringe that discretion.

Judge EVANS. I understand that practically what your opponents are trying to get at, is to eliminate the charge which
235 is made for carrying the grain from Chicago to New York or to the eastern seaboard, eliminate that extra charge that has to be made because of the differential—I guess they call it, or whatever it is—because the grain shipments originated west of Chicago, it being grain that originated west of Chicago the rate that is charged from Chicago to New York is greater than it would be if the regular rate from Chicago to New York was invoked. Is that correct?

Mr. KNOWLTON. Yes.

Judge IGOE. That is not the way I understand it. I understand their complaint is that a penalty has been imposed upon the barge lines.

Judge EVANS. Well, I am coming to that in a second. I want to know now what the rate from Chicago to New York is if the penalty is imposed upon it.

Judge IGOE. Imposed on the barge line rates.

Mr. WALTER. 26 cents. That is the base rate which your Honor inquires about, the reshipping rate on grain now in effect from Chicago to New York on all kinds of grain, whether arrived in
9 Chicago by barge, rail, or lake.

Judge IGOE. It is what?

Mr. WALTERS. 26 cents a hundred, and the proposal is to make it or leave it 26 cents for lake and rail arrived grain, but increase it by 3 cents.

236 Judge IGOE. What is the reason in that case for that 3-cent increase?

Judge EVANS. That is what I have been trying to get specifically.

Mr. WALTER. That question is addressed to Mr. Knowlton.

Judge IGOE. Does the Interstate Commerce Commission indicate any reason for that increase?

Mr. KNOWLTON. I think so, your Honor.

Judge IGOE. What is it?

Mr. KNOWLTON. I am really not in shape to answer the question.

Judge IGOE. That is the main question here, isn't it?

Judge EVANS. He has just come in to take the place of another person.

Judge IGOE. I understand that, but that is the main question that is before us here.

Mr. KNOWLTON. I think I stated that I have not been able to go into the merits.

Judge IGOE. As I understand the other part of the argument is that if this new proposed rate is set aside and enjoined, then you go back to the old rate which is higher than this one.

Mr. KNOWLTON. You mean——

Judge IGOE. You say our action would be futile if
237 we took it here because it would not give them any relief. Why?

Mr. KNOWLTON. You mean just the suspending of the order?

Judge IGOE. Yes. Why wouldn't that give them relief?

Mr. KNOWLTON. The suspending of the order? Because the order requires the cancellation of the proposed higher local.

Judge IGOE. Yes.

Mr. KNOWLTON. And also that would leave the standard proportional in effect. Now, if you suspend the cancelling order, you see it does not accomplish the purpose.

Judge IGOE. Is the proportional rate higher than the one proposed in this tariff?

Mr. KNOWLTON. No, the proposal is lower.

Judge IGOE. Then why wouldn't they get relief?

Mr. KNOWLTON. They have relief now. They would have relief under the Commission's order cancelling the proposed local rate and leaving in effect the proportional, the regular proportional reshipping rate.

Now, if that part of the order is suspended, why, it would not accomplish the purpose that they want, the suspension of the new rates.

Judge IGOE. What is the present rate?

238 Mr. KNOWLTON. The present rate is the regular standard reshipping rate that is applicable to all kinds of traffic outbound.

Judge IGOE. And this proposed change would raise that rate so far as the barge grain is concerned, wouldn't it?

Mr. KNOWLTON. Yes, it is an in-between rate, between the higher regular rate and what I call the standard proportional or reshipping rate. It is in between those points.

Judge IGOE. If this rate is not put into effect, then the present rates that are now applicable would be lower than the one you propose by this new rate; isn't that true?

Mr. KNOWLTON. It would, by the Commission's order of cancellation now.

Judge IGOE. Then I didn't follow you when you say the relief asked for here if granted them, they would not get any relief out of it.

Mr. KNOWLTON. Well, what I am speaking of is the mere postponing or suspending of the order that was entered.

Now, in addition to that, it was the without prejudice statement of the Commission, without prejudice to the filing of these new rates which were prescribed. But those rates are not controlled by the Commission's order.

239 Judge IGOE. You mean the railroad companies just put them into effect then?

Mr. KNOWLTON. That is why I say, yes. That is the point I make, in order to accomplish what is desired here and to really give the restraint, the Court would have to—because the railroads are not here to defend—they would have to order the Commission to suspend, and as I pointed out, there is no occasion for going into a new investigation, no reason for the Commission in its judgment to go into a new investigation on these rates which it has already investigated; it would have no power to institute any such investigation. So the Court would, in doing what is asked, not only infringe on the usual suspension authority of the Commission, but it would really be making them do something which it is powerless to do unless there is a reason for again going into the lawfulness of the rates. Now, that is the point I make there.

And also that I know of no case where the Court has purported to control the suspension discretion of the Commission, and the cases are quite to the contrary.

Judge IGOE. By that do you mean the railroads would file new rates?

Mr. KNOWLTON. The railroads would file new rates with
240 the Commission.

Judge IGOE. They would file new rates. In other words, if this injunctional order were entered, you say that would give no relief to the parties who are seeking relief here?

Mr. KNOWLTON. Not unless the order, or the application made here does apply, not only for a restraining order which would stop the operation of the actual order entered, but it would also, the rates being in effect, that is being filed to become effective very shortly, the enjoining of that order which does not require them and which has to do with something really different, it would not accomplish the purpose.

Judge EVANS. Wouldn't we have authority at the same time, if we grant the relief of the restraining order, also have authority to restrain the enforcement or putting into effect of those rates?

Mr. KNOWLTON. Against the railroads?

Judge EVANS. Well, right here and now.

Mr. KNOWLTON. Or against the Commission? My point is that you haven't got that authority.

Judge EVANS. If we should order the railroads brought in, we could do so.

Mr. KNOWLTON. It is my view you could, sir, but I know
241 some of the railroads take the position you could not; but it is my view you could.

Judge EVANS. But we could not do it without the railroads being present or parties to the proceeding.

Mr. KNOWLTON. Your order could not run against the railroads, and to make it run against us, as I explained, is controlling our discretion in the matter of suspension also.

Judge EVANS. I understand that point, but I mean only on the railroads. All right, we have got your point, and now we will hear your opponent.

The first question is whether or not we should continue the hearing for two purposes; one is until the counsel who has been in the case and is familiar with the order itself, returns rather than this counsel who has been brought in on one point, could be here. The second one is as to the advisability of getting the railroads in.

Mr. HAYES. I will address myself to those two things, your Honor.

The point is this, there will be irreparable injury unless the relief here prayed for is granted today for the reason that unless that relief is granted today, including the restraint directed to the Commission from permitting these rates to go into effect, then

they will go into effect at midnight tonight and then
242 all of the consequences or more——

Judge EVANS. I do not think that would necessarily follow in a short case like this as being irreparable, but let us assume that it is. It is something we don't want.

Mr. HAYES. Your Honor has in mind the short time that they are involved. I was about to say that once those rates have gone into effect, then the argument which has been addressed to your Honor might acquire validity, and then there would be a question as to the right of the Commission to suspend a rate that had gone into effect.

Judge EVANS. Well, we can meet that, that is of secondary importance. We can, for that matter, if we are going to continue it for another date, grant the injunction or restraining order here today until the further order of the Court.

Mr. HAYES. I only ask, your Honor, for this restraining order for a period of 60 days which is the maximum that the statute permits, anyway.

Judge EVANS. As far as I am concerned, I will go farther, if I think they are entitled to it, than 60 days, providing you are right. If you are not right at all, you ought not to have any more than enough days to find out in the proper time.

243 Mr. HAYES. That is true.

Judge EVANS. Now, those are the two things. It strikes me offhand there is something serious about this necessity of having the real adversary here, which is the railroads.

Mr. HAYES. If your Honor please, the statute under which we are acting has made by its terms the defendant. The action shall be against the United States of America. Now, the railroads and the Interstate Commerce Commission, and anyone who is interested, has the right to intervene. They knew of it, of course. This bill as filed prays for preliminary as well as final relief. They have not seen fit to intervene and the terms of the Act makes the defendant the one that is named, namely, the United States. The Interstate Commerce Commission and it alone has intervened in any of the cases. It was their privilege to intervene. We have followed the statutory method. We would suffer irreparable injury not only for the short period but also in respect of the serious question of your Honor's right to direct the Commission to suspend after the rate had taken effect. But before it takes effect, there is absolutely no question about it.

Counsel says there would be no occasion for going into a
244 new investigation because a long investigation has been concluded. What he means is the Commission would not suspend these rates under any circumstances, whoever asked them to. There may be occasion to suspend these rates if the Commis-

sion has acted unlawfully in prescribing them, and it is the precise purpose of the statue to give this Court the function of determining if the Commission has made that mistake, and if this Court holds it has, then there is furnished sufficient reason for going into a new investigation along the lines of the principles laid down by the decision of the Court. But that will be forestalled unless these rates are prevented from taking effect, and the argument will be made to your Honors, you could have enjoined, you refused to do so, you permitted the rates to go into effect, and now nothing can be done until such time as the Commission has concluded an investigation if anybody asks for it.

Judge EVANS. I am not so very seriously impressed, to tell the truth, about that. But where proceedings were had and we were endeavoring to get the real merits of the case and counsel did not appear or something, and we postponed it, I think we could correct anything that happened. But I am more concerned in trying to get this thing correct and right.

Mr. HAYES. It appreciate that.

245 Judge EVANS. Now, the Interstate Commerce Commission, following the Supreme Court's decision, did not celebrate a victory but went to work and sought to correct this extra charge that was being placed upon the freight that originated in barges. It corrected it all until it got down to where it says, "with the customary differentials on the products and export traffic, and which are no less favorable to the ex-barge traffic and no more favorable to the ex-rail and ex-lake traffic than is represented." You see, they are not, or at least the rule is here that they are not going to favor the rail nor the barge traffic. The only difference that they are going to recognize so far as being favorable is by the relation between such prescribed ex-barge proportionals on the one hand and the present ex-rail and ex-lake proportionals or specifics on the other. Now, frankly, that is pretty nearly Greek to me.

Mr. HAYES. May I make my poor attempt, your Honor, at a translation of that traffic jargon?

Judge EVANS. Am I right to say that they wanted to be no more favorable to one than to the other, notwithstanding whatever they may have done before, except that it is represented by the proportionals? Can you tell me that?

Mr. HAYES. Let me put it in the terms of a specific
246 example, May I?

Let's say that the rate on local grain that starts right here in Chicago and which was grown at State and Madison Streets, from Chicago to New York is 34½ cents, as it is; but let us say that the reshipping rate on grain that is coming in from the west by means of transportation not over the lake is 26 cents, as it is;

and then let us say the people who are interested in the grain which is shipped into Chicago who, may I be conservative, outnumber those interested in grain grown at State and Madison Streets which would take that local rate, are then subjected by the Interstate Commerce Commission to a prescribed rate of 29 cents from Chicago to New York if their grain that they buy on this market comes in by barge, but can go to New York for 26 cents if the grain that they buy on this market came in by rail.

There you have the situation.

Judge EVANS. But would that be consistent with the statement "with the customary differentials on the products and export traffic"?

Mr. HAYES. That, your Honor, has no reference to the situation which we are referring to.

Judge EVANS. "Which are no less favorable to the ex-barge traffic and no more favorable to the ex-rail and
247 ex-lake traffic than is represented." Is that difference the 3 cents and is your statement consistent with that?

Mr. HAYES. My statement is absolutely consistent with that. The two things are incidental. The differential, which is the one will be lawful—and I have been giving the base level—that differential is the one which always obtains with respect to grain that is meant for export as against grain which is domestic.

Judge EVANS. Yes.

Mr. HAYES. And as between raw grain and processed grain. So that is not in our problem.

Now, what you could do if you took the figures that I mentioned, 34½ cents for the grain at State and Madison Streets, and 26 cents for the rail grain and lake grain, and 29 cents for the barge grain, is to do this: You could say that the proportional on ex-barge is 29 cents and the proportional on ex-barge has got to be that much lower than the local rate. But in the same terms and in the same breath when you say that that is the rate that you are going to prescribe in terms of its relationship to the local rate, you are, when you have so prescribed it in terms of its relationship to the local, prescribing it also as higher in terms of its relationship
248 to the 26-cent proportional which everybody else's grain gets. And the only reason, in my opinion, that that statement was put in that form in the report was to avoid what has been done there and elsewhere in the report, showing on the face so that he who ran might read, that they were prescribing, as they have done, 29 cents for everybody's grain that comes in by barge, and 26 cents for everybody's grain that came in by lake.

Judge LOOE. What reason do they give for that?

Mr. HAYES. Why did they say that?

Judge IGOE. Let me ask Mr. Knowlton who disclaims any knowledge about that, what is your answer to that, do you know? What is the reason given for that differential?

Mr. HAYES. You mean the reason for that differential?

Judge IGOE. Yes.

Mr. HAYES. Here is the reason according to the report. What they say they did was to take all of the rail origins and then take all of the water origins.

Judge IGOE. By water you mean lake or barge?

Mr. HAYES. No sir; I mean the Inland Waterways barge. And then they averaged the distance of the inbound rail haul. This is what they say they did. And then they say they averaged the distance of the inbound water hauls and they found, they
249 say, that the average inbound hauls by rail were longer than the average inbound hauls by water; and therefore, they say, we will prescribe a higher proportional rate for that which comes in at present and presently by water for the on-movement than we prescribe for the rail.

Now, in so doing they ignore what, and this is getting to the merits of the case, what one might call, perhaps the real cogent facts of the situation. The statute prescribes that as between connecting carriers, in this case lake, rail, and barge, the outbound carrier shall not discriminate in its rates, fares, and charges against the traffic of any connecting carrier, including explicitly and expressly incoming carriers by water such as these plaintiffs are.

Now, it is our position that that statute is addressed to the situation in which the incoming carrier, let us say, who is a rail carrier from St. Louis, and an incoming carrier who is a water carrier from St. Louis, or from any other common origin west of Chicago which has water and rail combined, is in the position of needing an out-movement from the transit point here in Chicago in order to get any traffic at all. When the Commission includes in such an alleged calculation—they did not make it and the record so shows—but when they include in such an al-
250 leged calculation rail origins clear back to the Rocky Mountains that are not water competitive at all, and applies factors so derived to the relative competitive situation of grain originating in St. Louis which can come to Chicago by either rail or water, they are considering as a basis for their position a matter which is wholly irrelevant to the purpose which was intended to be accomplished by the statute which said, "The on-carrier shall not discriminate in its rates, fares, and charges against the traffic of any connecting carrier."

Judge EVANS. To be a little bit more specific, is the on-carrier necessarily discriminating if he charges one originating carrier

a little more for hauling his freight, based upon the length of the haul, we will say, and on the circumstances under which the haul is made, does discrimination take place when there is a difference in the rates?

Mr. HAYES. As between grain for the same origins west of Chicago?

Judge EVANS. Yes.

Mr. HAYES. That is our point.

Judge EVANS. Some point west of the Mississippi and another one 300 miles west of the Mississippi, or any other?

Mr. HAYES. No, your Honor, that is not quite right.

251 Judge EVANS. All of these cases are cases that come to this Court, to the first court to be decided only to be reversed by the Supreme Court saying, well, the Interstate Commerce Commission has a lot of factors to take into consideration and we must not disturb anything that they do because they are possessed of so much factual information that the rest of us do not have. Like the southern freight rates on coal, the coal rates that we have had here. I must take into consideration economic conditions and economic questions. And it sort of strikes me offhand it might be that the Interstate Commerce Commission might in determining whether a rate which shall be charged from this point is dependent upon the distance of the haul, or the circumstances under which the freight is hauled, under which the commodity is hauled.

Mr. HAYES. That is right. We do not object if they do that.

Judge EVANS. Well, it seems to me that is pretty nearly the basis of their decision on the merits.

Mr. HAYES. Well, we are not going into the merits yet, but let me address myself just as directly and earnestly to what your Honor has said as I can.

Forgive me if I put it in terms of my conviction and
252 positiveness. They did not do that. They pretended to do that. I have no objection if they want to make a differ-out-rate for the grain that comes in from the Rocky Mountains than they make for grain that comes in from Morris. That will suit me perfectly.

My objection is that when that grain comes in from Morris, whether it comes in by barge or whether it comes in by rail to Chicago, Illinois, then it is discrimination to charge a higher sum for the out-movement just because that grain came in from that common point by barge than is charged when it comes in by rail.

Judge IGOE. Your long and short haul should apply to the barge line the same as it applies to the rail line?

Mr. HAYES. What is sauce for the goose should be sauce for the gander but the way that is set up threatens discrimination.

Judge IGOE. Isn't the effect of what is being attempted to be done here really the establishment of a minimum below which the barge lines cannot go in charging for their transportation of this grain from its origination up to the point of destination here in Chicago? That, in effect is what it amounts to, and that minimum would agree with the rail rate.

Mr. HAYES. I am not sure I follow your Honor.

Judge IGOE. They have said that the barge lines coming in here will have to pay a penalty if that grain is trans-
253 shipped beyond Chicago toward the east.

Mr. HAYES. Yes, their traffic will bear the penalty.

Judge IGOE. And that penalty agrees with what it has been figured will be the cost of the rail transportation for that same grain from the point of origin up here to Chicago.

Mr. HAYES. No, your Honor; there isn't anything at all in this record about the cost of rail transportation except the fact that you can come into Chicago for a certain rate by rail, yes, that is there; but what is attempted here is to, by increasing the outbound rate, offset the low cost advantage of the inbound transportation which has the effect of taking away from the inbound shipper by barge the advantage of low cost transportation by barge into Chicago.

Judge IGOE. I get that, but I thought when we built this Illinois Waterway the chief point upon which it was sold to the people was that it would provide cheap transportation for articles that could move over that waterway.

Mr. HAYES. YOUR Honor, I thought so, too.

Judge IGOE. Well, that is the way it was sold to the people of Illinois and that is the proposition upon which we have spent $20,000,000 of our money around here for the purpose of con-
structing that canal.

254 Mr. HAYES. And Federal money.

Judge IGOE. If this situation goes into effect, whatever advantage might have been obtained by the people living on that waterway, is completely destroyed, and there is no reason for them to ship over the waterway any more, is there?

Mr. HAYES. They cannot afford to ship over the waterway.

Judge EVANS. We have had all this brought out before, I remember, and the Chief Justice was completely sold on it.

Mr. HAYES. Your Honor, I think the Supreme Court was completely sold.

Judge EVANS. But when we got through we had just wasted our time and your time and we got nowhere. I don't want, if possible, to do the same thing again. Now the same question is presented

with the exception of the completion of the hearing, where before it was not quite completed, but aside from that, I do not see what is the rational effect of that Supreme Court decision other than that our decision enjoining it is wrong and was reversed.

Mr. HAYES. May I read from that decision a little further?

Judge EVANS. There was a lot of talk and a lot of
255 language used, but they reversed us, and our order was to enjoin the order of the Interstate Commerce Commission.

Mr. HAYES. Because it prescribed an 8½-cent penalty.

Judge EVANS. Yes. Now they prescribe a 3-cent penalty, so what is going to be the result when we get through this time?

Mr. HAYES. That is what the Supreme Court held, your Honor, it held not that you were mistaken in enjoying the order that prescribed an 8½-cent penalty but that we were all mistaken, possibly including the Commission, in supposing that the Commission had prescribed or approved any penalty or any rate at all. The court said:

"True, the Commission stated that the railroads 'are justified under Section 1 in treating the ex-barge traffic the same as local or ex-truck traffic' and found that 'the proposed schedules are shown to be just and reasonable.' But this does not constitute a finding that the rates were lawful; they 'may lie within the zone of reasonableness and yet result in undue prejudice' or otherwise violate the Act. The Commission also stated that the facts
256 of record show that 'the proposed schedules cannot be condemned as unlawful under Sections 2 and 3 of the Act.' But this statement followed immediately upon the Commission's statement that from its conclusion that protestants' claim as a matter of right to the existing proportionals was erroneous, 'It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations.' Read it the context, we think it meant only that the proposed schedules could not be struck down upon the erroneous view advanced by the protestants. The finding of the Commission that the proposed schedules 'are not shown to be otherwise unlawful' is, we think, to be similarly read."

What was that erroneous view? The court described it and we are not making that contention.

Judge EVANS. No; your view was just as at present, just as it is now.

Mr. HAYES. No, your Honor.

Judge EVANS. There was no possibility of the carrier
257 that was to carry the grain from Chicago to New York, imposing such an increased rate. Why talk about these other matters? The rate was void.

Mr. HAYES. May I read?

Judge EVANS. It was beyond the power of the Commission to make a rate at the end of any hearing.

Mr. HAYES. I follow your Honor perfectly but may I read what the Supreme Court says was the view that was advanced by those protestants before the Commission, not before you but before the Commission, by which they said they were bound?

This was in the proceedings before the Commission.

"In the proceedings before the Commission the protestants pitched their case upon two propositions"—

and, by the way, I was not a protestant before the Commission when the case was heard.

"—pitched their case upon two propositions: (1) To deny the ex-barge grain the benefit of proportionals sought to be cancelled was necessarily unlawful since the physical carriage beyond Chicago was substantially the same, no matter where the grain originated; (2) Since denial of that benefit was necessarily unlawful, the Commission was bound to maintain the status quo by
258 cancelling the proposed schedules and thus perpetuating the existing rate structure, whatever might be its defects.

"As the Commission correctly observed with reference to the first contention, 'to adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned.'

"Proportional rates so differing and lower than local rates for like out-bound transportation have a long history, antedating the Interstate Commerce Act itself."

And the Court proceeded to defend them. And, as I said earlier to your Honors, I do not make that argument that was held wrong. I have no quarrel with a proportional rate out of Chicago that varies with the length of the actual in-bound haul on grain from St. Louis or grain from Kansas City or grain from Morris, Illinois. That is all right. But where grain comes in from a common origin, from the same point, the same kind of grain and the in-bound haul is just the same and there isn't any difference in the length of the in-bound haul, then to charge more just because it came in by barge than you charge because it came in by
259 rail is in defiance, it seems to me, of the provisions of the statute which says the out-bound carrier shall not discriminate in its rates, fares and charges against the traffic of any connecting carrier, including the carrier by water, expressly so included.

So if you can make a differential just on the fact that it comes in by water, then that would be permission to discriminate against a water carrier because he was a water carrier, and against the terms, the express terms of the statute which include water carriers within the protection against discrimination and against the spirit of it. It seems to me that is common sense. Perhaps I cannot see it fairly.

Judge EVANS. Now, listen to this. It seems to me the opinion of the majority there could not have been much less cloudy, which was most unfortunate for us in the way of instructing us.

"The policy provisions of the Transportation Act, as well as the specific statutory provisions, provide only standards of considerable generality and some overlapping. It requires administration to 'recognize and preserve the inherent advantages of each'—rail, water, and motor transport. It also seeks 'sound economic conditions' for all kinds of transportation. For
260 more than a year after the enactment of this Act, and until after the Commission had finally disposed of the case, appellees"—

that is the Inland Waterway Company—

"—showed no disposition to make proposals or to develop a record upon the basis of which the Commission might prescribe rates in view of their particular circumstances and under the provisions of the Act designed with reference to them. Instead they relied upon the erroneous view that they were by law entitled to the fortuitous and in many respects unlawful benefits of the existing rate structure. Their nearly four years of litigation have not, however, been in vain, for during all this time they have managed to keep the proposed schedules in abeyance—first by compulsory suspension for the allowable period of seven months at the hands of the Commission, then by the railroads' voluntary act at the expiration of that period, and finally by the compulsion of the district court's injunction.

"Our function does not permit us either to prescribe or approve rates, and our decision carries no implication of approval of any
261 rates here involved. Nor are we at liberty to prescribe, general attitudes the Commission must adopt toward the exercise of discretion left to it rather than to courts. We decide only whether the Commission has acted within the power delegated to it by law. We are of opinion that it has and that the decision of the court below must be reversed."

Mr. HAYES. In other words, they held that they approve what they say the Commission did, which was to refuse to approve an 8½-cent penalty according to them.

Judge EVANS. Well, they also say it seems to me positively, the waterway people relied upon the erroneous view that they were by law entitled to the fortuitous and in many respects unlawful benefits of the existing rate structure. Now, why aren't they entitled to the rate benefits of it?

Mr. HAYES. Perhaps the existing rate structure, your Honor, needs comprehensive revision. I don't know. The point that we are making is that whatever the other sections of the Act may require, it is not possible to observe the statute and enforce the other sections of the Act by means which involve the trampling of section 3, means which involve a trampling on Section 3.

True, those 8½-cent penalties were kept in abeyance.
262 True also, the Commission found that the 8½-cent penalty was wrong on further hearing.

Judge EVANS. We think the injunction should be granted. I do not know how you should indicate them any more than I did the last time, but you may draw your findings and submit them to your opponent. I will ask you to be sure of your position because we want to comply with the statute and the decisions of the Supreme Court and the law of the land. On general principles I would think the parties most interested in this case are the railroad companies and they ought to be specifically notified.

Mr. HAYES. They have, I understand, your Honor informed various members of the Commission staff that they do not have the slightest intention of intervening here, and will not.

Judge EVANS. Lots of times courts get caught, you understand that, but somebody else doesn't understand, and then later they come in and say, "Well, we did not get any notice. We were not parties to the action."

Mr. HAYES. Well, I think I know Frank Cole well enough to say he will never claim before your Honor that he was sound asleep while this train of cars went by.

Mr. WALTER. At the hearing on October 15th, if he is interested he can come.

263 Judge IGOE. This is set for the merits for October 15th, isn't it?

Mr. WALTER. Yes, it is.

Judge EVANS. Is this the original copy of the order?

Mr. HAYES. There is the original and there are two copies that have been handed to your Honor.

Judge EVANS. They want you to sign the copies; you sign the copies.

(Which were all the proceedings had on the hearing of the above-entitled matter.)

264 In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 45–C–865 Consolidated

A. L. MECHLING, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF A. L. MECHLING BARGE LINE, PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT

CERTIFICATE

I hereby certify that the above and foregoing is a true, full, and accurate transcript of my original shorthand notes taken upon the hearing of the above-entitled matter.

THOMAS M. RYAN,
Official Court Reporter, United States District Court, Northern District of Illinois, Eastern Division.

264–1 *Plaintiff's Exhibit A*

Subject, except as otherwise provided herein, to Tariff of Increased Rates and Charges No. X–148, Agent B. T. Jones' I. C. C. No. 3659, M. F.-I. C. C. No. 85, C. T. C. No. 1801, Ohio No. 2015, Pa. P. U. C. No. 284, P. S. C. W. Va. No. 257, supplements thereto or successive issues thereof. See note below.

The operation of portions of tariff, as amended, referred to in Supplement 67, is suspended as provided in said supplement.

SUPPLEMENT NO. 133

To C. T. C. No. 1651, Ohio No. 1870, Pa. P. U. C. No. 249, P. S. C. W. Va. No. 232, I. C. C. No. 3356, M. F.-I. C. C. No. 34

Supplements Nos. ①67, ②69, ⑤75, ⑤76, ③96, 101, ⑥124, ④125, 131 and 133 contain all changes from the original tariff.

Supplement No. 128 (Suspension Notice—I. & S. Docket No. 5334—Routing Grain). Supplement No. 132 (Cancellation Notice in I. & S. Docket No. 4718—Ex-Barge Traffic). (Portions of Supplements Nos. 126 and 127 under supension in I. & S. Docket No. 5334—Routing Grain).

CENTRAL FREIGHT ASSOCIATION TARIFF BUREAU

B. T. Jones, Agent

Supplement No. 133 to Freight Tariff No. 245-G, Supplements referred to above contain all changes, Local, Joint and Proportional Rates applying on Grain, Grain Products and Byproducts of grain and other commodities as named on page 9 of tariff.

From stations in Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, New York, Ohio, Pennsylvania, West Virginia, Wisconsin, named on pages 10 to 78 of tariff as amended.

To Albany, N. Y., Baltimore, Md., Boston, Mass., New York, N. Y., Philadelphia, Pa., Rochester, N. Y., Syracuse, N. Y., Utica, N. Y., and other Eastern points in the United States named on pages 83, 84, 102 and 103 of tariff as amended.

Also Basis for Rates to United States and Canadian Ports for Export, as Provided in Section 2 of Tariff, as amended. Also Joint Rail-Motor Rates to Points served by the Boston & Maine Transportation Company.

Governed, except as otherwise provided herein, by Official Classification I. C. C.-O. C. No. 60, M. F.-I. C. C. No. 7, C. T. C.-O. C. No. 60, Ohio-O. C. No. 60, P. S. C.-Pa.-O. C. No. 60, P. S. C.-W. Va.-O. C. No. 60, A. H. Greenly, Agent, and by exceptions thereto, as indicated in Item 345 of tariff.

Issued June 1, 1945. Effective October 5, 1945 except as otherwise provided herein.

NOTICE

This supplement contains rates referred to in Item No. 104-D (Fourth Section Application) that are higher for shorter than for longer distances over the same route.

Authority to depart from the terms of Rule 9 (e) of Tariff Circular No. 20, granted by permission of the Interstate Commerce Commission No. 7920 of March 17, 1942.

Issued in conformity with findings of the Interstate Commerce Commission in I. & S. Docket No. 4718 decided February 13, 1945.

①Special Supplement—I. C. C. Service Order No. 68.

②Special Supplement—Ex Parte 148.

③Special Supplement—Suspension Notice (Ex Parte 148 Reopened).

④Special Supplement—Postponement Notice (Ex Parte 148 Reopened).

⑤Under suspension and postponement as provided by Supplements 96 and 125.

⑥Special Supplement—Amendment 6 to I. C. C. Service Order No. 68.

NOTE.—The operation of the provisions referring to this Note as to rates or charges published in this supplement is suspended on the effective dates of such rates or charges until January 1, 1946, except as otherwise provided in Item R-148, and will become operative January 1, 1946. The form of this publication is authorized by permission of the Interstate Commerce Commission, No. 15585 as amended December 12, 1944.

Issued by B. T. Jones, Agent, 608 So. Dearborn St., Chicago 5, Ill.

264-2 *Individual Carrier's Tariff Numbers*

Carrier	Number
Alton R. R.	F-2141-H
Atlantic Coast Line R. R.	F. T. 16-245-G
Baltimore and Ohio R. R.	Agency 1506-G
Chesapeake and Ohio Ry.	725-H
Chicago & Eastern Illinois R. R.	2300-E
Chicago, Attica & Southern R. R.	279-C
Clinchfield R. R.	F. L. 5630
Columbus and Greenville Ry.	1374-E
Detroit and Mackinac Ry.	G. F. D. 837-G
Detroit and Toledo Shore Line R. R.	369-D
Durham & Southern Ry.	G. F. O. Box 64
Erie R. R. (Lines West)	770-G
Grand Trunk Western R. R.	G. T. W. 750-G
Gulf, Mobile and Ohio R. R.	G. F. O. 4542
Illinois Central R. R.	13849-H
Illinois Terminal R. R.	555-G
Louisville and Nashville R. R.	G. F. O. 381-G Auth. File 308-387
Minneapolis & St. Louis R. R.	2271-H
Missouri-Illinois R. R.	58-G Auth. File F-63
New York, Chicago and St. Louis R. R.	G. F. D. 750-G
Norfolk Southern R. R.	F. L. 78-30
Pennsylvania R. R.	Agent's Index 261
Piedmont & Northern Ry.	G. F. O. Box 64
Southern Ry.—Lines East	S. T. F. 35 M. L. 5712 G. F. O. 2784
Southern Ry.—Lines West	G. F. O. 18

NOTE BB.—Rates referring to this Note will expire six months after the termination of the present war, unless sooner modified or terminated in further proceedings in I. C. C. Ex Parte 148 or other proceedings. During the effectiveness of rates referring to this note, all other reshipping or proportional rates in this tariff as amended on the same articles from and to the same points and via the same routes are inapplicable. The rates subject to Note BB are hereby suspended until January 1, 1946, and will become operative on January 1, 1946.

PARTICIPATING CARRIERS

Carriers Parties to Tariff and Effective Supplements are as Shown in Tariff, and Supplements Nos. 101 and 131

ALPHABETICAL LIST OF STATIONS FROM WHICH RATES APPLY AND RATE GROUPS IN WHICH LOCATED

Amend alphabetical list of stations from which rates apply, pages 11 to 20 of tariff, of the following stations on carriers indicated, to read as follows:

Station Nos.	Station	Carriers	Rate group No.
30	Argo, Ill.:		
	Proper	Alton	(S)100-R, (S)117.
	Proportional:		
	See Note 20	Alton	(S)(S)100-A.
	See Note 24	Alton	(S)(S)100-AA.
26	Argo, Ill.:		
	Proper	BRofC	100.
	Proportional:		
	See Note 20	BRofC	(S)100-A.
	See Note 24	BRofC	(S)100-AA.
80	Argo, Ill.:		
	Proper	IHB	100.
	Proportional:		
	See Note 20	IHB	(S)100-A.
	See Note 24	IHB	(S)100-AA.
24765	Berger, Ill.:		
	Proper	PRR	100.
	Proportional:		
	See Note 20	PRR	(S)100-A.
	See Note 24	PRR	(S)100-AA.
80	Blue Island, Ill.:		
	Proper	B&OCT	(S)100.
	Proportional:		
	See Note 20	B&OCT	(S)(S)100-A.
	See Note 24	B&OCT	(S)(S)100-AA.
40	(119) Blue Island, Ill.:		
	Proper	GT-W	(S)100.
	Proportional:		
	See Note 20	GT-W	(S)(S)100-A.
	See Note 24	GT-W	(S)(S)100-AA.
60	Blue Island, Ill.:		
	Proper	IHB	100.
	Proportional:		
	See Note 20	IHB	(S)100-A.
	See Note 24	IHB	(S)100-AA.
11012a	Blue Island, Ill.:		
	Proper	NYC(M)	(S)100.
	Proportional:		
	See Note 20	NYC(M)	(S)(S)100-A.
	See Note 24	NYC(M)	(S)(S)100-AA.
12325	Brookdale, Ill.:		
	Proper	B&O	(S)100.
	Proportional:		
	See Note 20	B&O	(S)(S)100-A.
	See Note 24	B&O	(S)(S)100-AA.
15	Burnham, Ill.:		
	Proper	CSS&SB	(S)100.
	Proportional:		
	See Note 20	CSS&SB	(S)(S)100-A.
	See Note 24	CSS&SB	(S)(S)100-AA.
250	Burnham, Ill.:		
	Proper	IHB	100.
	Proportional:		
	See Note 20	IHB	(S)100-A.
	See Note 24	IHB	(S)100-AA.
675	Burnham, Ill.:		
	Proper	NYC&StL	(S)100.
	Proportional:		
	See Note 20	NYC&StL	(S)(S)100-A.
	See Note 24	NYC&StL	(S)(S)100-AA.

Footnotes at end of table.

Station Nos.	Station	Carriers	Rate Group No.
20805	Burnham, Ill.:		
	Proper	PRR	@100.
	Proportional:		
	See Note 20	PRR	@@100-A.
	See Note 24	PRR	@@100-AA.
20765	Calumet, Ind.:		
	Proper	PRR	@100.
	Proportional:		
	See Note 20	PRR	@@100-A.
	See Note 24	PRR	@@100-AA.
40	Calumet City, Ill.:		
	Proper	IHB	100.
	Proportional:		
	See Note 20	IHB	@100-A.
	See Note 24	IHB	@100-AA.
11013	Calumet Park, Ill.:		
	Proper	NYC(M)	@100.
	Proportional:		
	See Note 20	NYC(M)	@@100-A.
	See Note 24	NYC(M)	@@100-AA.
30810	Calumet Park, Ill.:		
	Proper	PRR	@100.
	Proportional:		
	See Note 20	PRR	@@100-A.
	See Note 24	PRR	@@100-AA.
12000	@@Chicago, Ill.:		
	Proper	B&O	100.
	Proportional:		
	@See Note 20	B&O	100-A.
	See Note 24	B&O	100-AA.

@See also page 136 of tariff.
For explanation of Notes, see pages 85 to 101 of tariff, as amended.
For explanation of other reference marks, see pages 79 to 82 of tariff, as amended.

264–3 Amend alphabetical list of stations from which rates apply, pages 20 to 26 of tariff, as amended on page 5 of Supplement No. 101 and page 4 of Supplement No. 131, of the following stations on carriers indicated, to read as follows:

Station Nos.	Station	Carriers	Rate Group No. (except as noted)
9180	@@Chicago, Ill.:		
	Proper	C&O	100.
	Proportional:		
	See Note 20	C&O	100-A
	See Note 24	C&O	100-AA.
260	Chicago, Ill.:		
	Proper	C&EI	@100-J, @100-L, @@110.
	Proportional:		
	See Note 20	C&EI	@100-A.
	See Note 24	C&EI	@100-AA.
4925	@@Chicago, Ill.:		
	Proper	Erie	100.
	Proportional:		
	See Note 20	Erie	100-A.
	See Note 24	Erie	100-AA.
5	Chicago, Ill.:		
	See Notes 20 and 24.	C&NW	Pages 136 and 179 of tariff as amended.
5	@@Chicago, Ill.:		
	Proper	CI&L	100.
	Proportional:		
	@See Note 20	CI&L	100-A.
	See Note 24	CI&L	100-AA.

Footnotes at end of table.

Station Nos.	Station	Carriers	Rate Group No. (except as noted)
5	Chicago, Ill.:		
	Proper	CMSP&P	100.
	Proportional:		
	See Note 20	CMSP&P	100-A.
	See Note 24	CMSP&P	100-AA.
5	Chicago, Ill.:		
	Proper	CSS&SB	100.
	Proportional:		
	See Note 20	CSS&SB	100-A.
	See Note 24	CSS&SB	100-AA.
5	Chicago, Ill.:		
	Proper	GT-W	100.
	Proportional:		
	See Note 20	GT-W	100-A.
	See Note 24	GT-W	100-AA.
5	Chicago, Ill.:		
	Proper	IC	110, 117.
	Proportional:		
	See Note 20	IC	100-A.
	See Note 24	IC	100-AA.
4935	Chicago, Ill.:		
	Proper	NYC(C)	100.
	Proportional:		
	See Note 20	NYC(C)	100-A.
	See Note 24	NYC(C)	100-AA.
11905	Chicago, Ill.:		
	Proper	NYC(M)	100.
	Proportional:		
	See Note 20	NYC(M)	100-A.
	See Note 24	NYC(M)	100-AA.
5000	Chicago, Ill.:		
	Proper	NYC(W)	100.
	Proportional:		
	See Note 20	NYC(W)	100-A.
	See Note 24	NYC(W)	100-AA.
600	Chicago, Ill.:		
	Proper	NYC&StL	100.
	Proportional:		
	See Note 20	NYC&StL	100-A.
	See Note 24	NYC&StL	100-AA.
2030	Chicago, Ill.:		
	Proper	PRR	100.
	Proportional:		
	See Note 20	PRR	100-A.
	See Note 24	PRR	100-AA.
5	Chicago, Ill.:		
	Proper	PM	100.
	Proportional:		
	See Note 20	PM	100-A.
	See Note 24	PM	100-AA.
620	Chicago, Ill.:		
	Proper	Wab	100.
	Proportional:		
	See Note 20	Wab	100-A.
	See Note 24	Wab	100-AA.
15	Chicago Lawn, Ill.:		
	Proper	GT-W	100.
	Proportional:		
	See Note 20	GT-W	100-A.
	See Note 24	GT-W	100-AA.
2090	Clabarn, Ill.:		
	Proper	PRR	100.
	Proportional:		
	See Note 20	PRR	100-A.
	See Note 24	PRR	100-AA.
85	Dolton, Ill.:		
	Proper	C&EI	100-J, 100-L.
	Proportional:		
	See Note 20	C&EI	100-A.
	See Note 24	C&EI	100-AA.
2070	Dolton, Ill.:		
	Proper	PRR	100.
	Proportional:		
	See Note 20	PRR	100-A.
	See Note 24	PRR	100-AA.

Footnotes at end of table.

Station Nos.	Station	Carriers	Rate Group No. (except as noted)
160	East Chicago, Ind.:		
	Proper	B&OCT	(a)100.
	Proportional:		
	See Note 20	B&OCT	(a)(a)100-A.
	See Note 24	B&OCT	(a)(a)100-AA.
25	East Chicago, Ind.:		
	Proper	CSS&SB	(a)100.
	Proportional:		
	See Note 20	CSS&SB	(a)(a)100-A.
	See Note 24	CSS&SB	(a)(a)100-AA.
7635	East Chicago, Ind.:		
	Proper	NYC(W)	100.
	Proportional:		
	(a)See Note 20	NYC(W)	(a)100-A.
	See Note 24	NYC(W)	(a)100-AA.
20760	East Chicago, Ind.:		
	Proper	PRR	(a)100.
	Proportional:		
	See Note 20	PRR	(a)(a)100-A.
	See Note 24	PRR	(a)(a)100-AA.
595	(166)East Chicago, Ind.:		
	Proper	Wab	100.
	Proportional:		
	See Note 20	Wab	(a)100-A.
	See Note 24	Wab	(a)100-AA.
20725	East Side, Ill.: (Chicago)		
	Proper	PRR	(a)100.
	Proportional:		
	See Note 20	PRR	(a)(a)100-A.
	See Note 24	PRR	(a)(a)100-AA.
10	(119)Elsdon, Ill.:		
	Proper	GT-W	(a)100.
	Proportional:		
	See Note 20	GT-W	(a)(a)100-A.
	See Note 24	GT-W	(a)(a)100-AA.

(a)See also page 135 of tariff.
(a)See also page 136 of tariff.
(119)Applies only in connection with domestic rates on Grain and Grain Products and only on shipments routed via I. C. R. R., Decatur, Ill., and Pennsylvania R. R. to points on the Pennsylvania R. R., or via I. C. R. R., Decatur, Ill., Pennsylvania R. R., Buffalo, N. Y., Pittsburgh, Pa., or Pennsylvania R. R. junctions east thereof to destinations on other railroads.
(170)Applies only on shipments routed via C. & E. I. R. R., Watseka, Ill., T. P. & W. R. R., Peoria, Ill., or C. & E. I. R. R., Hustle, Ill., N. Y. C. & St. L. R. R., Peoria, Ill., thence routing instructions from Peoria, Ill., as per Section 3 of tariff, as amended.
For explanation of Notes, see pages 85 to 101 of tariff, as amended.
For explanation of other reference marks, see pages 79 to 82 of tariff, as amended.

264–4 Amend alphabetical list of stations from which rates apply, pages 30 to 37 of tariff, of the following stations on carriers indicated, to read as follows:

Station Nos.	Station	Carriers	Rate Group No.
55	Englewood, Ill.:		
	Proper	C&EI	(a)100-J, (a)100-L.
	Proportional:		
	See Note 20	C&EI	(a)100-A.
	See Note 24	C&EI	(a)100-AA.
10	Englewood, Ill.:		
	Proper	CI&L	(a)100.
	Proportional:		
	See Note 20	CI&L	(a)100-A.
	See Note 24	CI&L	(a)100-AA.

Footnotes at end of table.

Station Nos.	Station	Carriers	Rate Group No.
4930	Englewood, Ill.:		
	Proper	Erie	(a)100.
	Proportional:		
	See Note 20	Erie	(a)100-A.
	See Note 24	Erie	(a)100-AA.
5005	Englewood, Ill.:		
	Proper	NYC(W)	(a)100.
	Proportional:		
	@See Note 20	NYC(W)	(a)(a)100-A.
	See Note 24	NYC(W)	(a)(a)100-AA.
20745	Englewood, Ill.:		
	Proper	PRR	(a)100.
	Proportional:		
	See Note 20	PRR	(a)(a)100-A.
	See Note 24	PRR	(a)(a)100-AA.
615	(166) Englewood, Ill.: (Chicago)		
	Proper	Wab	(a)100.
	Proportional:		
	See Note 20	Wab	(a)100-A.
	See Note 24	Wab	(a)100-AA.
60	Englewood, Ill.: (76th Street)		
	Proper	C&EI	(a)400-J, (a)100-L.
	Proportional:		
	See Note 20	C&EI	(a)100-A.
	See Note 24	C&EI	(a)100-A.
30	(119) Evergreen Park, Ill.:		
	Proper	GT-W	(a)100.
	Proportional:		
	See Note 20	GT-W	(a)(a)100-A.
	See Note 24	GT-W	(a)(a)100-AA.
70	Fernwood, Ill.:		
	Proper	C&EI	(a)100-J, (a)100-L.
	Proportional:		
	See Note 20	C&EI	(a)100-A.
	See Note 24	C&EI	(a)100-AA.
12010	Forest Hill, Ill.:		
	Proper	B&O	(a)100.
	Proportional:		
	@See Note 20	B&O	(a)(a)100-A.
	See Note 24	B&O	(a)(a)100-AA.
617	(166) Forty-seventh St., Ill.: (Chicago)		
	Proper	Wab	100.
	Proportional:		
	See Note 20	Wab	(a)100-A.
	See Note 24	Wab	(a)100-AA.
20	Gibson, Ind.: (Lake Co.)		
	Proper	IHB	100.
	Proportional:		
	See Note 20	IHB	(a)100-A.
	See Note 24	IHB	(a)100-AA.
11016	Gibson, Ind.:		
	Proper	NYC(M)	
	Proportional:		
	See Note 20	NYC(M)	(a)(a)100-A.
	See Note 24	NYC(M)	(a)(a)100-AA.
7643	Gibson, Ind.:		
	Proper	NYC(W)	100.
	Proportional:		
	@See Note 20	NYC(W)	(a)100-A.
	See Note 24	NYC(W)	(a)100-AA.
11017	Gibson Transfer, Ind.:		
	Proper	NYC(M)	(a)100.
	Proportional:		
	See Note 20	NYC(M)	(a)(a)100-A.
	See Note 24	NYC(M)	(a)(a)100-AA.

Footnotes at end of table.

Station Nos.	Station	Carriers	Rate Group No.
5145	Gibson Transfer, Ind.:		
	Proper	NYC(W)	100.
	Proportional:		
	@See Note 20	NYC(W)	@100-A.
	See Note 24	NYC(W)	@100-AA.
24760	Globe, Ill.:		
	Proper	PRR	100.
	Proportional:		
	See Note 20	PRR	@100-A.
	See Note 24	PRR	@100-AA.
5020	Grand Crossing, Ill. (Chicago)		
	Proper	NYC(W)	@100.
	Proportional:		
	@See Note 20	NYC(W)	@@100-A.
	See Note 24	NYC(W)	@@100-AA.
20740	Grand Crossing, Ill.:		
	Proper	PRR	@100.
	Proportional:		
	See Note 20	PRR	@@100-A.
	See Note 24	PRR	@@100-AA.
7640	Grasselli, Ind.:		
	Proper	NYC(W)	100.
	Proportional:		
	@See Note 20	NYC(W)	@100-A.
	See Note 24	NYC(W)	@100-AA.
20770	Grasselli, Ind.:		
	Proper	PRR	@100.
	Proportional:		
	See Note 20	PRR	@@100-A.
	See Note 24	PRR	@@100-AA.
150	Hammond, Ind.:		
	Proper	B&OCT	@100.
	Proportional:		
	See Note 20	B&OCT	@@100-A.
	See Note 24	B&OCT	@@100-AA.
9175	Hammond, Ind.:		
	Proper	C&O	@100.
	Proportional:		
	See Note 20	C&O	@@100-A.
	See Note 24	C&O	@@100-AA.
30	Hammond, Ind.:		
	Proper	CI&L	@100.
	Proportional:		
	See Note 20	CI&L	@100-A.
	See Note 24	CI&L	@100-AA.
20	Hammond, Ind.:		
	Proper	CSS&SB	@100.
	Proportional:		
	See Note 20	CSS&SB	@@100-A.
	See Note 24	CSS&SB	@@100-AA.
295	Hammond, Ind.:		
	Proper	EJ&E	100.
	Proportional:		
	See Note 20	EJ&E	@100-A.
	See Note 24	EJ&E	@100-AA.

@See also page 136 of tariff.
For explanation of notes, see pages 85 to 101 of tariff, as amended.
For explanation of other reference marks, see pages 79 to 82 of tariff, as amended.

264–5. Amend alphabetical list of stations from which rates apply, pages 37 to 62 of tariff, of the following stations indicated, to read as follows:

Station Nos.	Station	Carriers	Rate Group No.
4910	Hammond, Ind.:		
	Proper	Erie	@100.
	Proportional:		
	See Note 20	Erie	@100-A.
	See Note 24	Erie	@100-AA.
11015	Hammond, Ind.:		
	Proper	NYC(M)	@100.
	Proportional:		
	See Note 20	NYC(M)	@@100-A.
	See Note 24	NYC(M)	@@100-AA.
670	Hammond, Ind.:		
	Proper	NYC&StL	@100.
	Proportional:		
	See Note 20	NYC&StL	@@100-A.
	See Note 24	NYC&StL	@@100-AA.
20780	Hammond, Ind.:		
	Proper	PRR	@100.
	Proportional:		
	See Note 20	PRR	@@100-A.
	See Note 24	PRR	@@100-AA.
600	(188) Hammond, Ind.: (State Line)		
	Proper	Wab	100.
	Proportional:		
	See Note 20	Wab	@100-A.
	See Note 24	Wab	@100-AA.
85	Harvey, Ill.:		
	Proper	B&OCT	@100.
	Proportional:		
	See Note 20	B&OCT	@@100-A.
	See Note 24	B&OCT	@@100-AA.
45	(110) Harvey, Ill.:		
	Proper	GT-W	@100.
	Proportional:		
	See Note 20	GT-W	@@100-A.
	See Note 24	GT-W	@@100-AA.
25	Hegewisch, Ill.:		
	Proper	CI&L	@100.
	Proportional:		
	See Note 20	CI&L	@100-A.
	See Note 24	CI&L	@100-AA.
10	Hegewisch, Ill.:		
	Proper	CSS&SB	@100.
	Proportional:		
	See Note 20	CSS&SB	@@100-A.
	See Note 24	CSS&SB	@@100-AA.
4915	Hegewisch, Ill.:		
	Proper	Erie	@100.
	Proportional:		
	See Note 20	Erie	@100-A.
	See Note 24	Erie	@100-AA.
20785	Hegewisch, Ill.:		
	Proper	PRR	@100.
	Proportional:		
	See Note 20	PRR	@@100-A.
	See Note 24	PRR	@@100-AA.
20795	Hutchinson, Ill.:		
	Proper	PRR	@100.
	Proportional:		
	See Note 20	PRR	@@100-A.
	See Note 24	PRR	@@100-AA.
12030	Indiana Harbor, Ind.:		
	Proper	B&O	@100.
	Proportional:		
	See Note 20	B&O	@@100-A.
	See Note 24	B&O	@@100-AA.

Station Nos.	Station	Carriers	Rate Group No.
5040	Indiana Harbor, Ind.:		
	Proper	NYC(W)	@100.
	Proportional:		
	@See Note 20	NYC(W)	@@100-A.
	See Note 24	NYC(W)	@@100-AA.
20700	Indiana Harbor, Ind.:		
	Proper	PRR	@100.
	Proportional:		
	See Note 20	PRR	@@100-A.
	See Note 24	PRR	@@100-AA.
80	Kensington, Ill.:		
	Proper	C&EI	@100-J, @100-L.
	Proportional:		
	See Note 20	C&EI	@100-A.
	See Note 24	C&EI	@100-AA.
11010	Kensington, Ill.:		
	Proper	NYC(M)	@100.
	Proportional:		
	See Note 20	NYC(M)	@@100-A.
	See Note 24	NYC(M)	@@100-AA.
35	(119) Mt. Greenwood, Ill.:		
	Proper	GT-W	@100.
	Proportional:		
	See Note 20	GT-W	@@100-A.
	See Note 24	GT-W	@@100-AA.
140	North Hammond, Ind.:		
	Proper	IHB	100.
	Proportional:		
	See Note 20	IHB	@100-A.
	See Note 24	IHB	@100-AA.
65	Oakdale, Ill.:		
	Proper	C&EI	@100-J, @100-L.
	Proportional:		
	See Note 20	C&EI	@100-A.
	See Note 24	C&EI	@100-AA.
12020	100th St., Ill.:		
	Proper	B&O	@100.
	Proportional:		
	See Note 20	B&O	@@100-A.
	See Note 24	B&O	@@100-AA.
7745	Osborn, Ind.:		
	Proper	NYC(W)	100.
	Proportional:		
	@See Note 20	NYC(W)	@100-A.
	See Note 24	NYC(W)	@100-AA.
665	Osborn, Ind.:		
	Proper	NYC&StL	@100.
	Proportional:		
	See Note 20	NYC&StL	@@100-A.
	See Note 24	NYC&StL	@@100-AA.
15	Pullman Jct., Ill.:		
	Proper	CI&L	@100.
	Proportional:		
	See Note 20	CI&L	@100-A.
	See Note 24	CI&L	@100-AA.
4920	Pullman Jct., Ill.:		
	Proper	Erie	@100.
	Proportional:		
	See Note 20	Erie	@100-A.
	See Note 24	Erie	@100-AA.
20775	Republic, Ind.:		
	Proper	PRR	@100.
	Proportional:		
	See Note 20	PRR	@@100-A.
	See Note 24	PRR	@@100-AA.

@See also page 136 of tariff.
For explanation of Notes, see pages 85 to 101 of tariff, as amended.
For explanation of other reference marks, see pages 79 to 82 of tariff, as amended.

264–6 Amend alphabetical list of stations from which rates apply, pages 63 to 78 of tariff, of the following stations, on carriers indicated, to read as follows:

Station Nos.	Station	Carriers	Rate Group No.
140	Riverdale, Ill.:		
	Proper	B&OCT	⑥100.
	Proportional:		
	See Note 20	B&OCT	⑥⑥100-A.
	See Note 24	B&OCT	⑥⑥100-AA.
24775	Riverdale, Ill.:		
	Proper	PRR	100.
	Proportional:		
	See Note 20	PRR	⑥100-A.
	See Note 24	PRR	⑥100-AA.
20710	Robertsdale, Ind.:		
	Proper	PRR	⑥100.
	Proportional:		
	See Note 20	PRR	⑥⑥100-A.
	See Note 24	PRR	⑥⑥100-AA.
280	Roby, Ind.:		
	Proper	IHB	100.
	Proportional:		
	See Note 20	IHB	⑥100-A.
	See Note 24	IHB	⑥100-AA.
20715	Roby, Ind.:		
	Proper	PRR	⑥100.
	Proportional:		
	See Note 20	PRR	⑥⑥100-A.
	See Note 24	PRR	⑥⑥100-AA.
75	Roseland, Ill.:		
	Proper	C&EI	⑧100-J, ⑧100-L.
	Proportional:		
	See Note 20	C&EI	⑧100-A.
	See Note 24	C&EI	⑧100-AA.
680	Solvay, Ill.:		
	Proper	NYC&StL	⑥100.
	Proportional:		
	See Note 20	NYC&StL	⑥⑥100-A.
	See Note 24	NYC&StL	⑥⑥100-AA.
12320	South Chicago, Ill.:		
	Proper	B&O	⑥100.
	Proportional:		
	See Note 20	B&O	⑥⑥100-A.
	See Note 24	B&O	⑥⑥100-AA.
320	South Chicago, Ill.:		
	Proper	EJ&E	100.
	Proportional:		
	See Note 20	EJ&E	⑥100-A.
	See Note 24	EJ&E	⑥100-AA.
232	South Chicago, Ill.: (E. Side)		
	Proper	IHB	100.
	Proportional:		
	See Note 20	IHB	⑥100-A.
	See Note 24	IHB	⑥100-AA.
5025	South Chicago, Ill.: (Chicago)		
	Proper	NYC(W)	⑥100.
	Proportional:		
	See Note 20	NYC(W)	⑥⑥100-A.
	See Note 24	NYC(W)	⑥⑥100-AA.
20735	South Chicago, Ill.:		
	Proper	PRR	⑥100.
	Proportional:		
	See Note 20	PRR	⑥⑥100-A.
	See Note 24	PRR	⑥⑥100-AA.
305	South Chicago, Ill.: (98th St.)		
	Proper	EJ&E	100.
	Proportional:		
	See Note 20	EJ&E	⑥100-A.
	See Note 24	EJ&E	⑥100-AA.

Footnotes at end of table.

Station Nos.	Station	Carriers	Rate Group No.
20	South Deering, Ill.:		
	Proper	CI&L	ⓐ100.
	Proportional:		
	See Note 20	CI&L	ⓐ100-A.
	See Note 24	CI&L	ⓐ100-AA.
685	Stony Island, Ill.:		
	Proper	NYC&StL	ⓐ100.
	Proportional:		
	See Note 20	NYC&StL	ⓐⓐ100-A.
	See Note 24	NYC&StL	ⓐⓐ100-AA.
24790	Washington Heights, Ill.:		
	Proper	PRR	100.
	Proportional:		
	See Note 20	PRR	ⓐ100-A.
	See Note 24	PRR	ⓐ100-AA.
24782	West Pullman, Ill.:		
	Proper	PRR	100.
	Proportional:		
	See Note 20	PRR	ⓐ100-A.
	See Note 24	PRR	ⓐ100-AA.
12025	Whiting, Ind.:		
	Proper	B&O	ⓐ100.
	Proportional:		
	ⓐSee Note 20	B&O	ⓐⓐ100-A.
	See Note 24	B&O	ⓐⓐ100-AA.
5035	Whiting, Ind.:		
	Proper	NYC(W)	ⓐ100.
	Proportional:		
	ⓐSee Note 20	NYC(W)	ⓐⓐ100-A.
	See Note 24	NYC(W)	ⓐⓐ100-AA.
20705	Whiting, Ind.:		
	Proper	PRR	ⓐ100.
	Proportional:		
	See Note 20	PRR	ⓐⓐ100-A.
	See Note 24	PRR	ⓐⓐ100-AA.
90	Yard Center, Ill.:		
	Proper	C&EI	ⓐ100-J; ⓐ100-L.
	Proportional:		
	See Note 20	C&EI	ⓐ100-A.
	See Note 24	C&EI	ⓐ100-AA.

ⓐSee also page 135 of tariff.
ⓐSee also page 136 of tariff.
For explanation of Notes, see pages 85 to 101 of tariff, as amended.
For explanation of other reference marks, see pages 79 to 82 of tariff, as amended.

264–7 EXPLANATION OF NOTES

Note 20 Cancels 20, page 2 of Supplement 132.

Application of Re-shipping or Proportional Rates from Chicago, Joliet, Kankakee, Milwaukee, Manitowoc, etc.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on traffic reaching the re-shipping point via rail or water transportation line (see Exception 2 below) that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the in-bound carrier via the re-shipping point from original shipping point to final destina-

tion; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rates from the re-shipping point to be added to the re-shipping rate therefrom. (See Exception 1 below.)

These rates are applicable on Ex-Lake shipments as of the date such shipments leave the lake port from which the rates subject to this Note are applicable.

The Ex-Lake Grain and (or) Grain Product rates will apply only on Grain and (or) Grain Products which arrive at Chicago, Milwaukee or Manitowoc via lake, also on Grain Products milled from Grain which arrives at these ports via lake. The Ex-Lake rates covered hereby are applicable as of the date shipments leave the respective points named herein.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

Exception 1.—The foregoing provision as to application of the local rates as minima will not apply on shipments of Malt and Malt Sprouts, C. L., originating at Jefferson Junction, Wis.

Exception 2.—The rates subject to the provisions of this Note will not apply from points in Group 100–AA or C&NW Station No. 5 (Chicago, Ill.), on traffic reaching such re-shipping points via river or canal. (See Note 24 below.)

Amend page 90 of tariff, by the addition of the following:

Note 24 (New).

Application of Re-shipping or Proportional Rates from Points in Group 100–AA and C&NW Station No. 5 (Chicago, Ill.), Ex-river or Canal.

Where reference is made to this Note, rates will apply as follows:

Rates subject to the provisions of this Note are re-shipping or proportional rates applicable only on traffic reaching the reshipping point via a river or canal transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points beyond the re-shipping point. These rates are applicable as of the

date of reshipment from the re-shipping point from which the rates subject to this Note are applicable. Exception.—Such rates will not apply on ex-lake traffic, viz.: traffic reaching the re-shipping point via a lake carrier vessel.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

These rates also apply on shipments originating at points beyond the re-shipping point, not stopped in transit at re-shipping point subject to this application and are applicable as of the date of re-shipment from the re-shipping point, from which the rates subject to this Note are applicable.

GENERAL APPLICATION OF RATES

Item No. 104–D Cancels Item No. 104–C.

Fourth Section Application

Fourth Section Application, C. F. A. No. 1080. Dated May 31, 1945. In connection with Grain, Grain Products and Grain By-Products, (Ex-River and Canal).

SECTION 1 (DOMESTIC RATES)

Amend domestic rates on Grain, page 121 of tariff, by the addition of the following:

DOMESTIC RATES ON GRAIN, C. L.

For List of Commodities Taking Grain Rates, also Minimum Weights, see Note 5, page 85 of tariff, as amended

From stations named on pages 10 to 78 of tariff, as amended	To— Albany, N. Y.	Baltimore, Md.	Bellington, W. Va.	Boston, Mass.	Cumberland, Md.	Hagerstown, Md. (Via N. & W. Ry.)	New York, N. Y.	Newport News, Va. Norfolk, Va.	Philadelphia, Pa.	Rochester, N. Y.	Rockland, Me.	Strasburg, Va.	Syracuse, N. Y.	Utica, N. Y.
	Subject to application of rates, items Nos. 5 to 117 of tariff, as amended ◆Rates in Cents per 100 Pounds													
In Rate Group No.														
°100-AA	28	26	25	31	25	26	29	26	27	26	31	26	26	26½
ⓒ100-AA (See Note BB, page 2 herein)	29½	27½	26½	32½	26½	27½	30½	27½	28½	27½	32½	27½	27½	28

◆Increase.

ⓒNot subject to Tariff of Increased Rates and Charges No. X-148, Agent B. T. Jones' I. C. C. No. 3659, supplements thereto or successive issues thereof.

264–8 SECTION 1 (DOMESTIC RATES)

Amend domestic rates on Grain Products, page 124 of tariff, by the addition of the following:

DOMESTIC RATES ON GRAIN PRODUCTS, C. L.

For List of Commodities Taking Grain Products Rates, also Minimum Weights, see Notes 6 to 14, pages 85 to 87 of tariff, as amended.

From stations named on pages 10 to 78 of tariff, as amended	To— Albany, N. Y.	Baltimore, Md.	Belington, W. Va.	Boston, Mass.	Cumberland, Md.	Hagerstown, Md. (via N. & W. Ry.)	New York, N. Y.	Newport News, Va. Norfolk, Va.	Philadelphia, Pa.	Rochester, N. Y.	Rockland, Me.	Strasburg, Va.	Syracuse, N. Y.	Utica, N. Y.
	Subject to application of rates, items Nos. 5 to 117 of tariff, as amended—♦Rates in Cents per 100 Pounds													
In Rate Group No.														
100-AA	28½	26½	25½	31½	25½	26½	29½	26½	27½	26½	31½	26½	26½	27
©100-AA (See Note BB, page 2 herein)	30	28	27	33	27	28	31	28	29	28	33	28	28	28½

Amend domestic rates as shown on page 127 of tariff, by the addition of the following:

DOMESTIC RATES ON BY-PRODUCTS OF GRAIN, C. L.

For List of Commodities Taking By-Products of Grain Rates, also Minimum Weights, see Note 15 of tariff, as amended

From stations named on pages 10 to 78 of tariff, as amended	To— Albany, N. Y.	Baltimore, Md.	Belington, W. Va.	Boston, Mass.	Cumberland, Md.	Hagerstown, Md. (via N. & W. Ry.)	New York, N. Y.	Newport News, Va. Norfolk, Va.	Philadelphia, Pa.	Rochester, N. Y.	Rockland, Me.	Strasburg, Va.	Syracuse, N. Y.	Utica, N. Y.
	Subject to application of rates, items Nos. 5 to 117 of tariff, as amended—♦Rates in Cents per 100 Pounds													
In Rate Group No.														
100-AA	28½	26½	25½	31½	25½	26½	29½	26½	27½	26½	31½	26½	26½	27
©100-AA (See Note BB, page 2 herein)	30	28	27	33	27	28	31	28	29	28	33	28	28	28½

♦Increase.

©Not subject to tariff of increased rates and charges No. X-148, Agent T. B. Jones' I. C. C. No. 3659, supplements thereto or successive issues thereof.

Amend domestic rates on the following commodities, as shown on page 132 of tariff, by the addition of the following:

LOCAL AND RESHIPPING OR PROPORTIONAL RATES ON

Dextrine, dry, C. L., minimum weight 40,000 pounds, subject to Notes J, K, N, and R.

Flakes, bakers' or brewers' (made from starch).

Grits, brewers' refined (made from starch).

C. L., minimum weight 40,000 pounds subject to Notes J, K, N, and R.

Starch, noibn in Official Classification.

Starch, liquid, in fibre drums or in metal cans completely jacketed.

Starch substitutes, inedible, consisting of a physical mixture of starch made from grain or flour made from grain and chemical constituents, the chemical content not to exceed 2 percent, in bags, barrels, boxes or pails, or in packages 41 or 54 as defined in the Official Classification.

C. L., minimum weight 40,000 pounds, subject to Notes J, K, N, and R.

From—	To—													
Note.—Applies from the following points named on pages 16 to 78 of tariff, as amended, only when in connection with such points specific reference is made hereto.	Albany, N. Y.	Baltimore, Md.	Bellington, W. Va.	Boston, Mass.	Cumberland, Md.	Hagerstown, Md. (via N. & W. Ry.)	New York, N. Y.	Newport News, Va. Norfolk, Va.	Philadelphia, Pa.	Rochester, N. Y.	Rockland, Me.	Strasburg, Va.	Syracuse, N. Y.	Utica, N. Y.
	Subject to application of rates, items Nos. 5 to 117 of tariff, as amended—♦Rates in Cents per 100 Pounds													
Stations in Rate Group 100-AA	28½	26½	25½	31½	25½	26½	29½	26½	27½	26½	31½	26½	26½	27
⊙Stations in Rate Group 900-AA See Note BB, page 2 herein.	30	28	27	33	27	28	31	28	29	28	33	28	28	28½

♦Increase.

⊙Not subject to Tariff of Increased Rates and Charges No. X-148, Agent B. T. Jones' I. C. C. No. 3659, supplements thereto or successive issues thereof.

For explanation of other Notes, see pages 85 to 101 of tariff, as amended.

264–9 SECTION 1 (DOMESTIC RATES)

Amend domestic rates, page 136 of tariff, by the addition of the following:

Section No.	From—	Commodity	To—								
			Albany, N. Y.	Baltimore, Md.	Boston, Mass.	New York, N. Y.	Philadelphia, Pa.	Rochester, N. Y.	Rockland, Me.	Syracuse, N. Y.	Utica, N. Y.
			Subject to application of rates, Items Nos. 5 to 117 of tariff, as amended— ♦Rates in cents per 100 pounds								
	C. & N. W. Ry.										
5	Chicago, Ill. (See notes 24 and 135 of tariff, as amended).	Barley, corn, oats, rye, grain screenings, and wheat, in straight or mixed carloads, minimum weight: marked capacity of car, in bulk; in packages, 40,000 lbs.; except on oats, ear corn, snapped corn or corn in the shuck, minimum weight 80 percent of marked capacity of car in bulk; in packages, 40,000 lbs. (subject to notes A, B, C, D, E, F, I, J, K and R).	28 (x/c) 29½	26 (x/c) 27½	31 (x/c) 32½	29 (x/c) 30½	27 (x/c) 28½	26 (x/c) 27½	31 (x/c) 32½	26 (x/c) 27½	26½ (x/c) 28

♦Increase.
x Not subject to tariff of increased rates and charges No. X-148, Agent B. T. Jones' I. C. C. No. 2659, supplements thereto or successive issues thereof.
c See note BB, page 2 herein.

SECTION 2 (EXPORT RATES)

Amend export rates on grain, C. L., page 162 of tariff, by the addition of the following:

EXPORT RATES ON GRAIN, C. L.

List of Commodities Taking Grain Rates, also Minimum Weights. See Note 5, Page 85 of Tariff, as Amended

From stations named on pages 19 to 78 of tariff, as amended	Application (see note, page 168 of tariff, as amended)	To— Baltimore, Md. Column A	Baltimore, Md. Column B	Baltimore, Md. Column C	Boston, Mass., East Boston, Mass. Column A	Boston, Mass., East Boston, Mass. Column B	Boston, Mass., East Boston, Mass. Column C	Halifax, N. S. Column 1	Halifax, N. S. Column 2	Levis, Que.	Montreal, Que.	(290) New London, Conn. (via C. Vt. Ry.)	Newport News, Va.
		Subject to application of rates, items Nos. 5 to 117 and 450 to 540 of tariff, as amended— ◆Rates in cents per 100 pounds											
In rate group No.													
100-AA	2	25	(28)21½	20	26½	(28)23	21½	26½	37½	26½	25½	26½	28
(6)100-AA (see note BB, page 2 herein)	2	26	(28)22	20½	27½	(28)23½	22	27½	28½	27½	26½	27½	28

◆Increase.
(6)Not subject to tariff of increased rates and charges No. X-148, Agent T. B. Jones' I. C. C. No. 3659, supplements thereto or successive issues thereof.
(28)Proportional or reshipping rates will not apply from stations on or via the I. C. R. R.
(290)Applies only on shipments of grain in sacks.
Column A } For explanation, see page 168 of tariff, as amended.
Column B }
Column C }
Column 1.—Rates will not apply from stations on or via the B. & O. R. R.
Column 2.—Rates apply only from stations on or via the B. & O. R. R.
For explanation of other notes, see pages 85 to 101 of tariff, as amended.

26K 10 Amend export rates on grain, C. L., page 163 of tariff, by the addition of the following:

From stations named on pages 10 to 78 of tariff, as amended	Application (see note, page 168 of tariff, as amended)	To— New York, N. Y. Column A	New York, N. Y. Column B	New York, N. Y. Column C	Norfolk, Va. Column A	Norfolk, Va. Column B	Norfolk, Va. Column C	Philadelphia, Pa. Column A	Philadelphia, Pa. Column B	Philadelphia, Pa. Column C	Portland, Me. Column A	Portland, Me. Column B	Portland, Me. Column C	Quebec, Que.	Saint John, N. B.	West Saint John, N. B.
		Subject to application of rules, items Nos. 5 to 117 and 450 to 540 of tariff, as amended. ◆Rates in cents per 100 pounds														
In rate group No.																
100-AA	2	26½	{(8) 23}	21½	25	{(8) 21½}	20	25½	{(8) 22}	20½	26½	{(8) 23}	21½	26½	26½	26½
⑤100-AA (See note BB, page 2 herein)	2	27½	{(8) 23½}	22	26	{(8) 22}	20½	26½	{(8) 22½}	21	27½	{(8) 23½}	22	27½	27½	27½

◆Increase.
⑤Not subject to tariff of increased rates and charges No. X-148, Agent T. B. Jones' I. C. C. No. 3659, supplements thereto or successive issues thereof.
(8)Proportional or reshipping rates will not apply from stations on or via the I. C. R. R.
Column A, Column B, Column C } For explanation, see page 168 of tariff, as amended.

Amend export rates on grain products, C. L., page 169 of tariff, by the addition of the following:

EXPORT RATES ON GRAIN PRODUCTS, C. L.

For List of Commodities Taking Grain Products Rates, Also Minimum Weights, See Notes 6 to 14, Pages 85 to 87 of Tariff, as Amended

From stations named on pages 70 to 78 of tariff, as amended	To— Baltimore, Md.	Boston, Mass., East Boston, Mass.	Halifax, N. S. Column 1	Halifax, N. S. Column 2	Levis, Que.	Montreal, Que.	New London, Conn. (via C. Vt. Ry.)	Newport News, Va.	New York, N. Y.	Norfolk, Va.	Philadelphia, Pa.	Portland, Me.	Quebec, Que.	Saint John, N. B.	West Saint John, N. B.
In rate group No.	Subject to application of rates, items Nos. 5 to 117 and 450 to 549 of tariff, as amended—♦Rates in cents per 100 pounds														
100-AA	26	29	29	30	29	27	29	26	29	26	27	29	29	29	29
(c)100-AA (See note-BB, page 2 herein)	27	30	30	31	30	28	30	27	30	27	28	30	30	30	30

♦Increase.

(c)Not subject to tariff of increased rates and charges No. X-148, Agent, B. T. Jones' I. C. C. No. 3659, supplements thereto or successive issues thereof.

Column 1.—Rates will not apply from stations on or via the B. & O. R. R.

Column 2.—Rates apply only from stations on or via the B. & O. R. R.

264 11 Amend page 172 of tariff, by the addition of the following:

EXPORT RATES ON BY-PRODUCTS OF GRAIN, C. L.

For List of Commodities Taking By-Products of Grain Rates, Also Minimum Weights, See Note 15, Page 87 of Tariff, as Amended

From stations named on pages 10 to 78 of tariff, as amended	To— Baltimore, Md.	Boston, Mass., East Boston, Mass.	Halifax, N. S. Column 1	Halifax, N. S. Column 2	Levis, Que.	Montreal, Que.	New London, Conn. (via C. Vt. Ry.)	Newport News, Va.	New York, N. Y.	Norfolk, Va.	Philadelphia, Pa.	Portland, Me.	Quebec, Que.	Saint John, N. B.	West Saint John, N. B.
Subject to application of rates, items Nos. 5 to 177 and 450 to 549 of tariff, as amended— ◆Rates in cents per 100 pounds.															
In rate group No.															
100-AA	26	29	29	30	29	27	29	26	29	26	27	29	29	29	29
⑤100-AA (See Note B, page 2, herein)	27	30	30	31	30	28	30	27	30	27	28	30	30	30	30

◆Increase.
⑤Not subject to tariff of increased rates and charges No. X-148, Agent T. B. Jones' I. C. C. No. 3659, supplements thereto or successive issues thereof.
Column 1.—Rates will not apply from stations on or via the B. & O. R. R.
Column 2.—Rates apply only from stations on or via the B. & O. R. R.

Amend export rates on flour, C. L., page 173 of tariff, by the addition of the following:

EXPORT RATES ON FLOUR, C. L.

Minimum weight for cars of greater marked capacity than 60,000 pounds, 56,000 pounds; 60,000 pounds capacity or less, 85 percent of the marked capacity but not less than 40,000 pounds (subject to notes G and R, page 89 of tariff, as amended).

From stations named on pages 10 to 78 of tariff, as amended	To—															
	Baltimore, Md.	Boston, Mass. East Boston, Mass.	Halifax, N. S. Column 1	Halifax, N. S. Column 2	Levis, Que.	Montreal, Que.	New London, Conn. (via C. Vt. Ry.)	Newport News, Va.	New York, N. Y.	Norfolk, Va.	Philadelphia, Pa.	Portland, Me.	Quebec, Que.	Saint John, N. B.	West Saint John, N. B.
	Subject to application of rates, items Nos. 5 to 117 and 450 to 540 of tariff, as amended—♦Rates in cents per 100 pounds														
In rate group No.															
100-AA	26	28	28	29	28	27	28	26	28	26	27	28	28	28	28
⊙100-AA (See Note BB, page 2, herein)	27	29	29	30	29	28	29	27	29	27	28	29	29	29	29

♦Increase.
⊙Not subject to Tariff of Increased Rates and Charges No. X-148, Agent R. T. Jones' I. C. C. No. 3659, supplements thereto or successive issues thereof.
Column 1.—Rates will not apply from stations on or via the B. & O. R. R.
Column 2.—Rates apply only from stations on or via the B. & O. R. R.

264-12 Amend export rates, page 179 of tariff, by the addition of the following:

Station No.	From—	Commodities	To— Baltimore, Md.	Boston, Mass.	Halifax, N. S. Column 1	Halifax, N. S. Column 2	Levis, Que.	Montreal, Que.	New York, N. Y.	Philadelphia, Pa.	Portland, Me.	Quebec, Que.	Saint John, N. B.
			Subject to Application of Rates, Items Nos. 5 to 117 and 450 to 540 of tariff, as amended										
			♦Rates in cents per 100 pounds										
	C. & N. W. Ry.												
5	Chicago, Ill. (See Notes 24 and 135)	Barley, corn, oats, rye, grain screenings, and wheat, in straight or mixed carloads, minimum weight: in bulk, marked capacity of car; in packages, 40,000 lbs.; except on oats, ear corn, snapped corn, corn in the shuck, minimum weight: in bulk, 80 percent of marked capacity of car; in packages, 40,000 lbs. (Subject to Notes A, B, C, D, E, F, I, J, K, and R.)	25	26½	26½	27½	26½	25½	26½	25½	26½	26½	26½
			⑤⑥	⑤⑥	⑤⑥	⑤⑥	⑤⑥	⑤⑥	⑤⑥	⑤⑥	⑤⑥	⑤⑥	⑤⑥
			26	27½	27½	28½	27½	26½	27½	26½	27½	27½	27½

♦Increase.
⑤Not subject to Tariff of Increased Rates and charges No. X-148, agent B. T. Jones' I. C. C. No. 3659, supplements thereto or successive issues thereof.
⑥See Note BB, page 2 herein.
Column 1.—Rates will not apply from stations on or via the B. & O. R. R.
Column 2.—Rates apply only from stations on or via the B. & O. R. R.
For explanation of other Notes, see pages 85 to 101 of tariff, as amended.

264-13 *Plaintiff's Exhibit A-1*

Subject, except as otherwise provided herein, to Tariff of Increased Rates and Charges No. X-148, Agent B. T. Jones' I. C. C. No. 3659, C. T. C. No. 1801, Ind. R. C. No. D-693, M. P. S. C. No. 133, Agent L. E. Kipp's I. C. C. No. A-3386, supplements thereto or successive issues thereof. SEE NOTE BELOW.

SUPPLEMENT NO. 27

To C. T. C. No. 1790, Ind. R. C. No. D-687, M. P. S. C. No. 629, I. C. C. No. 3623, B. T. Jones, Agent; I. C. C. No. A-3375, L. E. Kipp, Agent.

Supplements Nos. ①4, 5, ②6, 15, ③18, 24, 25, 26 and 27 contain all changes from the original tariff.

CENTRAL FREIGHT ASSOCIATION TARIFF BUREAU

B. T. Jones, Agent

Supplement No. 27 to Freight Tariff No. 535-B, Supplements referred to above contain all changes, proportional rates applying on grain, grain products, and grain by-products.

CARLOADS

From Cairo, Ill., Chicago, Ill., East Joliet, Ill., East Ft. Madison, Ill., East Hannibal, Ill., East Keokuk Ill., East St. Louis, Ill., Gale, Ill., Kankakee, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manistique, Mich., Manitowoc, Wis., Menominee, Mich., Michigan City, Ind., Milwaukee, Wis., Peoria, Ill., Quincy, Ill., St. Louis, Mo., Thebes, Ill. and other points named on pages 7 to 10 of tariff as amended and Upper Mississippi River Crossings named in Note 70, page 89 of tariff, as amended.

To stations in Indiana, Kentucky, Michigan, New York, Ohio, Pennsylvania, West Virginia named on pages 11 to 69 of tariff, as amended.

Governed, except as otherwise provided herein by Official Classification No. 60, I. C. C.-O. C. No. 60, A. H. Greenly, Agent; by exceptions thereto, C. F. A. T. B. Freight Tariff No. 130-C, I C. C. No. 3926, issued by B. T. Jones, Agent, and by supplements thereto or successive issues of said publications.

Issued June 1, 1945. Effective October 5, 1945.

NOTICE

This supplement contains rates referred to in Item No. 553 herein (Fourth Section Application) that are higher for shorter than for longer distances over the same route.

Authority to depart from the terms of Rule 9 (e) of Tariff Circular No. 20, granted by permission of the Interstate Commerce Commission No. 7920 of March 17, 1942.

NOTE.—The operation of the provisions referring to this Note as to rates or charges published in this supplement is suspended until January 1, 1946, and will become operative January 1, 1946.

The form of this publication is authorized by permission of the Interstate Commerce Commission No. 15585 as amended December 12, 1944.

①Special Supplement Ex Parte 148.

②Under suspension and postponement as provided by paragraph (b), page 2 of Supplement No. 18.

③Special Supplement—Postponement Notice—Ex Parte 148 (Reopened).

L. E. Kipp, Agent, 516 W. Jackson Blvd., Chicago 6, Ill. Issued by B. T. Jones, Agent, 608 S. Dearborn St., Chicago 5, Ill.

264-14 *Individual Carriers' Tariff Numbers*

Carrier	Number
Alton R. R.	F-2259-C.
Baltimore and Ohio R. R. (W.)	2018-B.
Chesapeake and Ohio Ry	2459-C.
Chicago & Eastern Illinois R. R.	4385-B.
Gulf Mobile and Ohio R. R.	G. F. O. 4890.
Illinois Central R. R.	18239-C.
Illinois Terminal Co.	3102-B.
Louisville and Nashville R. R.	G. F. O. 3001-C, Auth. File 308-816, 2343-C.
Minneapolis and St. Louis Ry.	G. F. D. 1920-B.
New York, Chicago and St. Louis R. R.	Agent's Index 281.
Pennsylvania R. R. (West)	S. T. F. 35, M. L. 7976, G. F. O. 2784-A
Southern Ry. (East)	G. F. O. 326, S. T. F. 35.
Southern Ry. (West)	

PARTICIPATING CARRIERS

Carriers Parties to Tariff and Effective Supplements are as Shown in Tariff and Supplements Nos. 5, 15 and 25

Explanation of Notes

Amend page 75 of tariff by the addition of the following:

Note 19 (New).

Application of Reshipping or Proportional Rates From Points in the Chicago Switching District, Ex-River or Canal

Where reference is made to this Note rates will apply as follows:

Rates subject to the provisions of this Note are reshipping or proportional rates applicable only on traffic reaching the reshipping point via a river or canal transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points beyond the reshipping point. These rates are applicable as of the

date of reshipment from the reshipping point from which the rates subject to this note are applicable.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission. Exception.—Such rates will not apply on ex-lake traffic, viz: traffic reaching the reshipping point via a lake carrier vessel.

These rates also apply on shipments originating at points beyond the reshipping point, not stopped in transit at reshipping point subject to this application, as of the date of reshipment from the reshipping point from which the rates subject to this Note are applicable.

Note 20 Cancels Note 20, page 75 of tariff.

Application of Reshipping or Proportional Rates on Traffic Originating in Trans-Mississippi River Territory

Where reference is made to this Note, rates will apply as follows:

Rates subject to the provision of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line (See Exception 2 below) that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point; and will only apply on such traffic when originating at points in Trans-Mississippi River Territory (as described in Note 22, pages 76 and 77 of tariff); provided, that in no case shall the combination through rates to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rates therefrom.

These rates are subject to transit rules and regulations publisl. in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in Note 22, pages 76 and 77 of tariff, not stopped in transit at reshipping points subject to this application.

Exception 1.—Rates will not apply from Peoria, Ill., and points taking same rates on traffic subject to Note 50, page 87 of tariff.

Exception 2.—The rates subject to the provisions of this Note will not apply from points in the Chicago Switching District as defined in Freight Tariff No. 20-X, Agent R. G. Raasch's I. C. C. No. 584, or E. J. & E. stations: Hammond, Ind.; South Chicago, Ill., and South Chicago (98th Street), Ill., on traffic reaching such reshipping points via river or canal. See Note 19, above.

Note 40 Cancels Note 40, pages 83 and 84 of tariff.

Application of Reshipping or Proportional Rates on Traffic Originating in Northwest Territory

Where reference is made to this Note, rates apply as reshipping or proportional rates on:

Traffic reaching the reshipping point via a rail or water transportation line (See Exception below) that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in Northwest Territory as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

(a) Points in Arizona, except points in Trans-Mississippi River territory as described in Note 22, pages 76 and 77 of tariff, as amended.

(b) Points in California.

(c) Points in Nevada.

(d) Points in Oregon except points in Trans-Mississippi River territory as described in Note 22, pages 76 and 77 of tariff, as amended.

(e) Points in Washington.

(f) Points in Wisconsin.

(g) Points in Upper Peninsula of Michigan.

(h) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory as described in Note 22, pages 76 and 77 of tariff, as amended.

(i) Points in the Dominion of Canada, viz: All points in the Provinces of Alberta, British Columbia, Manitoba, and Saskatchewan.

(j) On Ex-Lake shipments which arrived by Lake Carrier Vessel at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis. These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

Exception.—The rates subject to the provisions of this Note will not apply from points in the Chicago Switching District as defined in Freight Tariff No. 20-X, Agent R. G. Raasch's I. C. C. No. 584, or E. J. & E. stations: Hammond, Ind., South Chicago, Ill., and South Chicago (98th St.), Ill., on traffic reaching such reshipping points via river or canal. See Note 19, above.

264–15 Note 45 Cancels Note 45, pages 85 and 86 of tariff.

RESHIPPING

Application of Reshipping or Proportional Rates Applicable on Traffic Originating at Points in the Territory as Described Below

Where reference is made to this note rates will apply as follows:

Rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line (except Illinois Grain moving via water transportation line also see Exception below) that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in the territory as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

Exception.—The rates subject to the provisions of this Note will not apply from points in the Chicago Switching District as defined in Freight Tariff No. 20-X, Agent R. G. Raasch's I. C. C. No. 584, or E. J. & E. stations: Hammond, Ind., South Chicago, Ill., and South Chicago (98th St.), Ill., on traffic reaching such reshipping points via river or canal. See Note 19, page 2 herein.

A-1. Rates on Grain from Chicago, Ill., East Joliet, Ill., Kankakee, Ill., Kewaunee, Wis., Manistique, Mich., Manitowoc, Wis., Menominee, Mich., and Milwaukee, Wis. and points taking same rates as shown on pages 7 to 10 inclusive, of tariff, as amended, subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond. Will not apply on traffic

originating in Trans-Mississippi River or Northwest territories (for description, see Notes 22 and 40, pages 76, 77, 83 and 84 of tariff, as amended).

A–2. Rates on Grain Products from Chicago, Ill., East Joliet, Ill., Kankakee, Ill., Kewaunee, Wis., Manistique, Mich., Manitowoc, Wis., Menominee, Mich., Milwaukee, Wis., and points taking same rates as shown on pages 7 to 10, inclusive of tariff, as amended, subject to the provisions of this Note, apply on shipments of Grain Products originating beyond. Will not apply on traffic originating in Trans-Mississippi River or Northwest Territories (for description, see Notes 22 and 40, pages 76, 77, 83 and 84 of tariff, as amended).

B–1. Rates on Grain from Peoria, Ill., and points taking same rates as shown on pages 7 to 10, inclusive of tariff, as amended (except as provided in paragraph B–2 hereof), subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond. Will not apply on traffic originating in Trans-Mississippi River or Northwest Territories (for description, see Notes 22 and 40, pages 76, 77, 83, and 84 of tariff, as amended).

B–2. Rates on Grain from Peoria, Ill., subject to the provisions of this Note will apply from Peoria, Bloomington, Crescent, Pekin, South Bartonville and Springfield, Ill., only as follows:

(a) As proportional or reshipping rates on shipments originating at stations shown in tariffs named in Note A, page 4 herein, supplements thereto or successive issues thereof, from which proportional rates are published to Peoria, Bloomington, Crescent, Pekin, South Bartonville or Springfield, Ill., and only when such proportional rates are assessed into Peoria, Bloomington, Crescent, Pekin, South Bartonville or Springfield, Ill., and when the grain is destined to the following points:

Bellaire	Ohio	Elizabeth	Pa.
Belle Vernon	Pa.	Elwood City	Pa.
Bessemer	Pa.	Erie	Pa.
Black Rock	N. Y.	Fairchance	Pa.
Blairsville	Pa.	Gauley Bridge	W. Va.
Bridgeport	Ohio	Grafton	W. Va.
Brownsville	Pa.	Huntington	W. Va.
Buffalo	N. Y.	Indiana	Pa.
Charleston	W. Va.	Irvineton	Pa.
Connellsville	Pa.	Jacobs Creek	Pa.
Corry	Pa.	Johnstown	Pa.
Crabtree	Pa.	Leckrone	Pa.
Dunkirk	N. Y.	Masontown	Pa.
East Buffalo	N. Y.	Maxwell	Pa.

Monongahela ----------Pa.	Point Pleasant--------W. Va.
Moundsville----------W. Va.	Ravenswood----------W. Va.
New Martinsville------W. Va.	Salamanca----------N. Y.
Niagara Falls----------N. Y.	Suspension Bridge------N. Y.
North Tonawanda-------N. Y.	Titusville----------Pa.
Oil City----------Pa.	Washington ----------Pa.
Parkersburg----------W. Va.	West Newton----------Pa.
Pittsburgh ----------Pa.	Wheeling----------W. Va.

and points named on pages 11 to 69 of tariff, as amended, taking same rates or arbitraries higher.

(b) As proportional or reshipping rates on shipments originating at points beyond, except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 22, pages 76 and 77 of tariff, as amended), Northwest Territory (see Note 40, pages 83 and 84 of tariff, as amended), or traffic covered by paragraph (a), Section B-2 of this note.

B-3. Rates on Grain Products from Peoria, Ill., and points taking same rates as shown on pages 7 to 10, inclusive, of tariff, as amended, subject to the provisions of this Note, apply on shipments of Grain Products (except on commodities bearing reference mark (50)), originating beyond, except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 22, pages 76 and 77 of tariff, as amended), Northwest Territory (see Note 40, pages 83 and 84 of tariff, as amended), except as otherwise provided in paragraph B-5 page 4 herein or on shipments subject to rates governed by the provisions of Note 50, page 87 of tariff, as amended, except that on shipments originating at stations shown in tariffs named in Note A page 4 herein, from which proportional rates are published to Peoria, Ill., and points taking same rates as shown on pages 7 to 10 inclusive, of tariff, as amended, and when the grain products are destined to the following points, rates on grain products subject to this Note, will only apply when the proportional rates published in tariffs named in Note A page 4 herein, are assessed on the inbound shipments to Peoria, Ill., and points taking same rates as shown on pages 7 to 10, inclusive of tariff, as amended.

Bellaire----------Ohio	Corry----------Pa.
Belle Vernon ----------Pa.	Crabtree ----------Pa.
Bessemer ----------Pa.	Dunkirk----------N. Y.
Black Rock----------N. Y.	East Buffalo----------N. Y.
Blairsville----------Pa.	Elizabeth----------Pa.
Bridgeport----------Ohio	Elwood City----------Pa.
Brownsville ----------Pa.	Erie ----------Pa.
Buffalo----------N. Y.	Fairchance ----------Pa.
Charleston----------W. Va.	Gauley Bridge--------W. Va.
Connellsville----------Pa.	Grafton----------W. Va.

Huntington	W. Va.	North Tonawanda	N. Y.
Indiana	Pa.	Oil City	Pa.
Irvineton	Pa.	Parkersburg	W. Va.
Jacobs Creek	Pa.	Pittsburgh	Pa.
Johnstown	Pa.	Point Pleasant	W. Va.
Leckrone	Pa.	Ravenswood	W. Va.
Masontown	Pa.	Salamanca	N. Y.
Maxwell	Pa.	Suspension Bridge	N. Y.
Monongahela	Pa.	Titusville	Pa.
Moundsville	W. Va.	Washington	Pa.
New Martinsville	W. Va.	West Newton	Pa.
Niagara Falls	N. Y.	Wheeling	W. Va.

and points named on pages 11 to 69 of tariff, as amended, taking same rates or arbitraries higher.

264—16 B-4. Rates on Grain Products bearing reference mark ⑤⓪ from Peoria, Ill., and points taking same rates as shown on pages 7 to 10, inclusive of tariff, as amended, subject to the provisions of this Note, apply on shipments originating beyond, except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 22, pages 76 and 77 of tariff, as amended), or Northwest Territory (see Note 40, pages 83 and 84 of tariff, as amended), except as otherwise provided in paragraph B-5, below.

B-5. Rates on Grain Products from Peoria, Ill., and points taking same rates as shown on pages 7 to 10 inclusive, of tariff, as amended, subject to the provisions of this Note, apply on shipments originating at points in Northwest territory and destined to points in the States of Indiana, Michigan and Ohio bearing reference "①" on pages 136 to 140 of tariff, as amended, under heading Northwest (see Note 40, pages 83 and 84 of tariff, as amended).

NOTE A

Issuing Line or Agent	Tariff No.	ICC No.	Item, Index or Reference No.
AT&SFRy	7124-I	13039	Items Nos. 165, 170, 175, 180, 185, 190.
AltonRR	1604-O	208	Item 220.
CB&QRR	G. F. O. 1346-T	19087	Items 750 to 970.
C&IMRy	5-J	B-298	Page 11.
C&NWRy	G. F. D. 17042-B	10816	Circle Reference ⑤ pages 23 and 24
CRI&PRy	3450-B	C-12847	Item No. 300.
ICRR	1537-K	A-11149	Index Nos. 396, 401, and 502 to 510 incl.
IHTRR	480-F	51	Item 60.
M&StLRy	1500-I	B-1024	Pages 79 and 80.
NYCRR	701	480	
NYC&StLRR	G. F. D. 45-U	5891	Note 7.
P&WVRy		67	Item 330.
PTCo	19-F	10	Item 370.
PRR	72-C	2333	Item 500.
S&SWRR	30-A (C&A&StLRy)	59	Item 85.
TP&WJRR	155	255	

Note 47 Cancels Note 47, page 87 of tariff.

Application of Reshipping or Proportional Rates Applicable on Traffic Originating at Points in the Territory as Described Below

Where reference is made to this Note, rates will apply as follows:

Rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line (except Illinois Grain moving via water transportation line; also see Exception below) that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in the territory as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

Rates on By-Products of Grain (see Note 5, page 75 of tariff), from Chicago, Ill., East Joliet, Ill., Kankakee, Ill., Kewaunee, Wis., Manistique, Mich., Manitowoc, Wis., Menominee, Mich., Milwaukee, Wis., and points taking same rates as shown on pages 7 to 10 inclusive of tariff, as amended, subject to the provisions of this Note, will apply on shipments of By-Products of Grain when originating at points beyond, except origin territory covered by Trans-Mississippi River Territory (see Note 22, pages 76 and 77 of tariff, as amended) or Northwest Territory (see Note 40, pages 83 and 84 of tariff, as amended).

Will also apply on Ex-Lake shipments which arrive by Lake Carrier Vessel or on By-Products of Grain milled, mixed or manufactured from Grain which arrive by Lake Carrier Vessel, at Chicago, Ill., Kewaunee, Wis., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis.

Rates on By-Products of Grain, from Peoria, Ill., and points taking same rates as shown on pages 7 to 10, inclusive of tariff, as amended, subject to the provisions of this Note, apply on shipments of By-Products of Grain, originating beyond, except origin territory covered by Trans-Mississippi River Territory (see Note 22, pages 76 and 77 of tariff, as amended), or Northwest Territory (see Note 40, pages 83 and 84 of tariff, as amended).

Exception.—The rates subject to the provisions of this Note will not apply from points in the Chicago Switching District as defined in Freight Tariff No. 20–X, Agent R. G. Raasch's I. C. C. No. 584, or E. J. & E. stations: Hammond, Ind., South Chicago, Ill., and South Chicago (98th St.), Ill., on traffic reaching such reshipping points via river or canal. See Note 19, page 2 herein.

RULES AND REGULATIONS

Item No. 553 (New).

Fourth Section Application

Fourth Section Application, C. F. A. No. 1080; dated May 31, 1945; in connection with Grain, Grain Products, Grain By-Products (Ex-River and Canal).

264–17: Amend pages 120 to 123 of tariff by the addition of the following:

RATES ON GRAIN AND GRAIN PRODUCTS, C. L., SEE NOTE 5, PAGE 75 OF TARIFF APPLYING FROM CHICAGO, ILL.

and points taking same rates as named in note 125, page 8, herein. Rates are not subject to application of rates as provided on pages 7 to 10, inclusive, of tariff, as amended. See note 19, page 2, herein.

(Issued in conformity with findings of the Interstate Commerce Commission in I. & S. Docket 4718, decided February 13, 1945.)

To stations named below and stations taking same rates as named on pages 11 to 69 of tariff, as amended	Rates in cents per 100 lbs. (see item No. 850)	To stations named below and stations taking same rates as named on pages 11 to 69 of tariff, as amended	Rates in cents per 100 lbs. (see item No. 850)
Adrian, Mich	15	Augusta, Ohio	(6) 23
Afton, Ohio	21		(6) 23½
Akron, Ind	13	Aurora, Ohio	18
Akron, Ohio	18	Avilla, Ind	15
Alba, Mich	20	Avoca, Ind	18
Albany, Ohio	21	Ayrshire, Ind	16
Albion, Mich	15	Bad Axe, Mich	18
Albion, Pa	21	Bailey, Mich	17
Alcona, Mich	21	Bainbridge, Ohio	21
Alexandria, Ind	15	Baldwin, Mich	17
Allen, Mich	15	Bancroft, Mich	15
Alliance, Ohio	18	Barce, Ind	13
Alma, Mich	15	Basil, Ohio	21
Alpena, Mich	21	Battle Creek, Mich	15
Amanda, Ohio	21	Bay City, Mich	15
Anderson, Ind	15	Beach City, Ohio	20
Angell, Mich	20	Beatrice, Ind	12
Ann Arbor, Mich	15	Beaverton, Mich	17
Ansonia, Ohio	15	Beck, Ind	16
Antwerp, Ohio	15	Bedford, Ind	18
Argos, Ind	12	Bellaire, Ohio	(6) 23
Artic, Ind	15		(6) 23½
Ashland, Ky	21	Belle Centre, Ohio	15
Ashtabula, Ohio	21	Bellefontaine, Ohio	15
Athens, Ohio	21	Bellevue, Ohio	18
Attica, Ind	13	Belshaw, Ind	10
Atwater, Ohio	18	Benton Harbor, Mich	12
Auburn, Ind	15	Bentonville, Ind	17
		Berne, Ind	15

Footnotes at end of table.

To stations named below and stations taking same rates as named on pages 11 to 69 of tariff, as amended	Rates in cents per 100 lbs. (see item No. 850)
Berry, Mich	17
Big Rapids, Mich	17
Black Rock, N. Y	(1) 23
	(2) 23½
Blairsville, Pa	(1) 25
	(2) 25½
Bluffton, Ind	15
Bolivar, Ind	13
Bowerston, Ohio	21
Boyne City, Mich	20
Brazil, Ind	15
Briant, Ind	15
Brice, Ind	15
Bristol, Ind	13
Brook, Ind	13
Brookville, Ohio	18
Brownsville, Pa	(1) 25
	(2) 25½
Bryan, Ohio	15
Bucyrus, Ohio	15
Buffalo, N. Y	(1) 23
	(2) 23½
Bunker Hill, Ind	15
Butler, Ind	15
Cadillac, Mich	18
Cambridge, Ohio	21
Canal Fulton, Ohio	18
Canton, Ohio	18
Carlisle, Ohio	18
Carsonville, Mich	18
Caseville, Mich	18
Cassopolis, Mich	15
Catlettsburg, Ky	21
Cecil, Ohio	15
Cedar Springs, Mich	15
Celina, Ohio	15
Centre Line, Mich	15
Charleston, W. Va	(1) 23
	(2) 23½
Charlotte, Mich	15
Cheboygan, Mich	21
Chesterfield, Ind	15
Chillicothe, Ohio	21
Cincinnati, Ohio	18½
Circleville, Ohio	21
Clare, Mich	17
Clare, Ohio	18½
Clarksville, Mich	15
Clay City, Ind	18
Cleveland, Ohio	18
Cloverdale, Ind	17
Colfax, Ind	13
Coloma, Mich	15
Columbia City, Ind	13
Columbus, Ind	18
Columbus, Ohio	18
Columbus Grove, Ohio	15
Conneaut Lake, Pa	(1) 23
	(2) 23½

To stations named below and stations taking same rates as named on pages 11 to 69 of tariff, as amended	Rates in cents per 100 lbs. (see item No. 850)
Connellsville, Pa	(1) 25
	(2) 25½
Connersville, Ind	18
Conotton, Ohio	(1) 23
	(2) 23½
Corning, Ohio	21
Corry, Pa	(1) 23
	(2) 23½
Cortland, Ohio	21
Coshocton, Ohio	21
Crabtree, Pa	(1) 25
	(2) 25½
Crane, Ind	18
Crawfordsville, Ind	13
Crestline, Ohio	18
Crete, Ind	17
Crown Point, Ind	12
Cutler, Ind	13
Cygnet, Ohio	15
Dayton, Ohio	18
Davis, Ohio (Portage Co.)	18
Decatur, Ind	15
Defiance, Ohio	15
Delaware, Ohio	18
Delphos, Ohio	15
Delphi, Ind	13
Denver, Ind	13
Deshler, Ohio	15
Detroit, Mich	15
Dixon, Ohio	15
Dover, Ohio	21
Dresden, Ohio	21
Dryden, Mich	18
Dunkirk, Ind	15
Dunkirk, N. Y	(1) 23
	(2) 23½
Dunreith, Ind	17
Dyer, Ind	12
East Buffalo, N. Y	(1) 23
	(2) 23½
Eames, Mich	15
East Rochester, Ohio	(1) 23
	(2) 23½
East Tawas-Tawas City, Mich	21
Eaton, Ind	15
Eaton Rapids, Mich	15
Edgerton, Ohio	15
Elk Rapids, Mich	20
Elroy, Ohio	15
Erie, Pa	(1) 23
	(2) 23½
Evansville, Ind	16
Fairchance, Pa	(1) 25
	(2) 25½
Fairmont, W. Va	(1) 25
	(2) 25½
Fair Oaks, Ind	12

(1) Applies on Grain only.
(2) Applies on Grain Products only.

♦Increase.
♦Reduction.

264–18 RATES ON GRAIN AND GRAIN PRODUCTS, C. L., SEE NOTE 5, PAGE 75 OF TARIFF APPLYING FROM CHICAGO, ILL.

and points taking same rates as named in note 125, page 8, herein. Rates are not subject to application of rates as provided on pages 7 to 10, inclusive of tariff, as amended. See note 19, page 2, herein.

(Issued in conformity with findings of the Interstate Commerce Commission in I. & S. Docket 4718, decided February 13, 1945.)

To stations named below and stations taking same rates as named on pages 11 to 69 of tariff, as amended	Rates in cents per 100 lbs. (see item No. 850).
Fairport Harbor, Ohio	21
Farwell, Mich	17
Findlay, Ohio	15
Flint, Mich	15
Fort Recovery, Ohio	15
Fort Wayne, Ind	15
Fostoria, Ohio	15
Frances, Ind	17
Frankfort, Ind	13
Frankfort, Mich	16
Franklin, Ind	17
Frazier, Ohio	21
Frederic, Mich	20
Fremont, Mich	17
Fulton, Ind	13
Gallipolis, Ohio	21
Garrett, Ind	15
Gas City, Ind	15
Gauley Bridge, W. Va	(c) 25 (c) 25½
Gilead, Ind	13
Glasgow, W. Va	(c) 25 (c) 25½
Glenmore, Ohio	15
Goodland, Ind	13
Goshen, Ind	13
Gwynn, W. Va	(c) 25 (c) 25½
Grand Rapids, Mich	15
Grayling, Mich	20
Greencastle, Ind	15
Greenfield, Ohio	21
Greenville, Mich	15
Greenville, Ohio	17
Guion, Ind	13
Guernsey, Ind	13
Haggerstown, Ind	15
Hamilton, Ohio	18
Harbor Beach, Mich	18
Harrison, Mich	17
Hart, Mich	17
Hawks, Ohio	21
Hebron, Ohio	21
Helena, Ohio	15
Hempstead, Ohio	18
Henderson, Ky	18
Henry St., Mich	20
Hillsboro, Ohio	21
Hillsdale, Ind	13
Houston Jct., Pa	(c) 23 (c) 23½
Howard City, Mich	17
Huntington, W. Va	23
Imlay City, Mich	15
Indiana, Pa	(c) 25 (c) 25½
Indianapolis, Ind	15
Ingomar, Ohio	18
Interlochen, Mich	18
Ionia, Mich	15
Irondale, Ohio	(c) 23 (c) 23½
Ironton, Ohio	21
Irvineton, Pa	(c) 25 (c) 25½
Jackson, Mich	15
Jackson, Ohio	21
Jasper, Ind	18
Jamestown, Pa	21
Jeffersonville, Ind	18½

To stations named below and stations taking same rates as named on pages 11 to 69 of tariff, as amended	Rates in cents per 100 lbs. (see item No. 850)
Johnstown, Pa	(c) 25 (c) 25½
Junction City, Ohio	21
Kalamazoo, Mich	15
Kalkaska, Mich	18
Kawkawlin, Mich	15
Kendallville, Ind	15
Kennard, Ind	15
Kenton, Ohio	15
Kewanna, Ind	13
Knightstown, Ind	17
Kokomo, Ind	13
Kunkle, Ohio	15
La Crosse, Ind	12
La Fayette, Ind	13
Lancaster, Ohio	21
Lansing, Mich	15
La Otto, Ind	15
Lapeer, Mich	15
La Porte, Ind	12
Larwill, Ind	15
Lathrop, Ohio	21
Lawton, Mich	15
Leavittsburg, Ohio	21
Lebanon, Ind	15
Lebanon, Ohio	18
Leechburg, Pa	(c) 25 (c) 25½
Lee, Ind	12
Leipsic, Ohio	15
Lima, Ohio	15
Lisbon, Ohio	21
Logansport, Ind	13
Logootee, Ind	18
Losantville, Ind	17
Louisville, Ky	20
Loveland, Ohio	18½
Ludington, Mich	17
Lynn, Ind	17
Mackinaw City, Mich	21
Madison, Ind	18½
Manistee, Mich	17
Mansfield, Ohio	18
Marietta, Ohio	21
Marion, Ind	15
Marion, Ohio	15
Martinsville, Ind	17
Mason, Ohio	18
Masontown, Pa	(c) 25 (c) 25½
Massillon, Ohio	18
Mattawan, Mich	15
Maxwell, Pa	(c) 25 (c) 25½
Maysville, Ky	21
Mechanicstown, Ohio	(c) 23 (c) 23½
Michigan City, Ind	12
Middletown, Ind	15
Middletown, Ohio	18
Midland, Mich	17
Midland City, Ohio	21
Millersburg, Ind	13
Millwood, W. Va	(c) 23 (c) 23½
Mishawaka, Ind	13
Mitchell, Ind	18
Moline, Ohio	15
Montmorency, Ind	13
Monon, Ind	13

Footnotes at end of table.

To stations named below and stations taking same rates as named on pages 11 to 69 of tariff, as amended	Rates in cents per 100 lbs. (see Item No. 850)
Morocco, Ind	12
Mt. Vernon, Ohio	18
Muncie, Ind	15
Muskegon, Mich	15
New Albany, Ind	18½
Newark, Ohio	18
New Bethlehem, Pa	⑤25
	⑥25½
New Buffalo, Mich	12
New Castle, Ind	15
Newcomerstown, Ohio	21
New Galilee, Pa	21
New Madison, Ohio	17
New Paris, Ohio	17
New Philadelphia, Ohio	21
Niagara Falls, N. Y	⑤23
	⑥23½
Niles, Mich	12
Noblesville, Ind	15
North Hayden, Ind	10
North Judson, Ind	12
North Kenova, Ohio	21
North Manchester, Ind	13
North Tonawanda, N. Y	⑤23
	⑥23½
North Vernon, Ind	18
264-19 Northville, Mich	15
Oakland, Ohio	18
Oakland City, Ind	16
Oil City, Pa	⑤23
	⑥23½
Omer, Mich	20
Ottawa, Ohio	15
Owendale, Mich	18
Owensboro, Ky	21
Owosso, Mich	17
Oxford, Ind	13
Parkersburg, W. Va	⑤23
	⑥23½
Peoria, Ohio	15
Peru, Ind	13
Petoskey, Mich	20
Pinconning, Mich	20
Piqua, Ohio	17
Pittsburgh, Pa	⑤23
	⑥23½
Pittsford, Mich	15
Plymouth, Ind	12
Portage, Mich	15
Port Huron, Mich	15
Portland, Ind	15
Portsmouth, Ohio	21
Prescott, Mich	20
Princeton, Ind	16
Putnamville, Ind	17
Ravenna, Ohio	18
Ravenswood, W. Va	⑤23
	⑥23½
Red Key, Ind	15
Reed City, Mich	17
Richmond, Ind	17
Richmond, Mich	15
Ridgeway, Ohio	15
Roachdale, Ind	15
Rochester, Mich	15
Rockville, Ind	13
Rosedale, Ohio	15
Rushville, Ind	18
St. Clair, Mich	15
Salamanca, N. Y	⑤23
	⑥23½

To stations named below and stations taking same rates as named on pages 11 to 69 of tariff, as amended	Rates in cents per 100 lbs. (see Item No. 850)
Sandusky, Ohio	18
Savona, Ohio	17
Seymour, Ind	18
Shadeland, Ind	13
Shawnee, Ohio	21
Sheff, Ind	13
Shelbyville, Ind	17
Shenango, Pa	21
Shirley, Ind	15
Sidney, Ohio	17
South Bend, Ind	12
South Lenore, Ind	17
South Whitley, Ind	13
Springfield, Ohio	18
Steubenville, Ind	15
Stroh, Ind	15
Sturgis, Mich	15
Sullivan, Ind	15
Summit, Ind	15
Suspension Bridge, N. Y	⑤23
	⑥23½
Switz City, Ind	18
Syracuse, Ind	15
Terre Haute, Ind	13
Tiffin, Ohio	15
Titusville, Pa	⑤23
	⑥23½
Toledo, Ohio	15
Tower, Mich	21
Treaty, Ind	15
Traverse City, Mich	20
Trimble, Ohio	21
Troy, Ohio	17
Uhrichsville, Ohio	21
Union City, Ind.-Ohio	15
Upland, Ind	15
Upper Sandusky, Ohio	15
Urbana, Ind	15
Urbana, Ohio	18
Valparaiso, Ind	12
Vanlue, Ohio	15
Van Wert, Ohio	15
Veedersburg, Ind	13
Vicksburg, Mich	15
Vincennes, Ind	16
Wabash, Ind	15
Washington, Ind	18
Washington C. H., Ohio	21
Weidman, Mich	17
Weishaars, Ind	13
Wellston, Ohio	21
West Branch, Mich	20
West Carrollton, Ohio	18
West Fairport, Ohio	21
West Loudonville, Ohio	18
Westfield, Ind	15
West Lebanon, Ind	13
West Melcher, Ind	13
West Pittsburgh, Pa	⑤23
	⑥23½
Wheeling, W. Va	⑤23
	⑥23½
Winchester, Ind	15
Wolcottville, Ind	15
Woodlington, Ohio	15
Worthington, Ind	18
Xenia, Ohio	18
Youngstown, Ohio	21
Ypsilanti, Mich	15
Zadoc, Ind	12
Zanesville, Ohio	21

⑤Applies on Grain only.
⑥Applies on Grain Products only.
For explanation of other reference marks, see page 72 of tariff.
♦Increase.
♦Reduction.

264-20 Amend pages 120 to 123 of tariff, by the addition of the following:

RATES ON BYPRODUCTS OF GRAIN, C. L., SEE NOTE 5, PAGE 75 OF TARIFF APPLYING FROM CHICAGO, ILL.

and points taking same rates as named in note 125, page 8, herein. Rates are no subject to application of rates, as provided on pages 7 to 10, inclusive, of tariff, as amended. See note 19, page 2, herein.

(Issued in conformity with findings of the Interstate Commerce Commission in I. & S. Docket 4718, decided February 13, 1945.)

To stations named below and stations taking same rates as named on pages 11 to 69, inclusive of tariff, as amended	Rates in cents per 100 lbs. (see Item No. 850)	To stations named below and stations taking same rates as named on pages 11 to 69, inclusive of tariff, as amended	Rates in cents per 100 lbs. (see Item No. 850)
Albion, Pa	21	Jamestown, Pa	21
Ashland, Ky	21	Johnstown, Pa	25½
Ashtabula, Ohio	21	Leavittsburg, Ohio	21
Bellaire, Ohio	23½	Leckrone, Pa	25½
Black Rock, N. Y	23½	Lisbon, Ohio	21
Blairsville, Pa	25½	Marietta, Ohio	21
Bowerston, Ohio	21	Masontown, Pa	25½
Brownsville, Pa	25½	Maxwell, Pa	25½
Buffalo, N. Y	23½	Millwood, W. Va	23½
Charleston, W. Va	23½	New Bethlehem, Pa	25½
Connellsville, Pa	25½	New Galilee, Pa	21
Corry, Pa	23½	New Philadelphia, Ohio	21
Cortland, Ohio	21	Niagara Falls, N. Y	23½
Crabtree, Pa	25½	North Tonawanda, N. Y	23½
Dover, Ohio	21	Oil City, Pa	23½
Dunkirk, N. Y	23½	Parkersburg, W. Va	23½
East Buffalo, N. Y	23½	Pittsburgh, Pa	23½
Erie, Pa	23½	Ravenswood, W. Va	23½
Fairchance, Pa	25½	Salamanca, N. Y	23½
Fairmont, W. Va	25½	Shenango, Pa	21
Fairport Harbor, Ohio	21	Suspension Bridge, N. Y	23½
Gallipolis, Ohio	21	Titusville, Pa	23½
Gauley Bridge, W. Va	25½	Uhrichsville, Ohio	21
Grafton, W. Va	25½	West Fairport, Ohio	21
Huntington, W. Va	23	Wheeling, W. Va	23½
Indiana, Pa	25½	Youngstown, Ohio	21
Irvington, Pa	23½		

Note 125.—Where reference is made to this note, rates will apply from the following points:

Argo	Ill.	Gibson Transfer	Ind.
Ashburn	Ill.	Globe	Ill.
Berger	Ill.	Grand Crossing	Ill.
Blue Island	Ill.	Grasselli	Ind.
Broadview	Ill.	Hammond	Ind.
Brookdale	Ill.	Harvey	Ill.
Burnham	Ill.	Hawthorne	Ill.
Calumet	Ind.	Hegewisch	Ill.
Calumet City	Ill.	Hessville	Ill.
Calumet Park	Ill.	Hutchinson	Ill.
Chicago, Ill	Ill.	Indiana Harbor	Ind.
Chicago Lawn	Ill.	Kensington	Ill.
Clabarn	Ill.	Mt. Greenwood	Ill.
Dolton	Ill.	North Hammond	Ind.
East Chicago	Ind.	Oakdale	Ill.
East Side	Ill.	100th St	Ill.
Elsdon	Ill.	Osborn	Ind.
Englewood	Ill.	Pullman Jct	Ill.
Englewood (76th Street)	Ill.	Republic	Ind.
Evergreen Park	Ill.	Riverdale	Ill.
Fernwood	Ill.	Robertsdale	Ind.
Forest Hill	Ill.	Roby	Ind.
Forty-seventh St	Ill.	Roseland	Ill.
Gibson	Ind.	Solvay	Ill.
		South Chicago	Ill.

Note 125.—Where reference is made to this note, rates will apply from the following points—Continued

South Chicago (98th St.)	Ill.	Washington Heights	Ill.
South Deering	Ill.	West Pullman	Ill.
South Hammond	Ind.	Whiting	Ind.
Stony Island	Ill.	Yard Center	Ill.

266 In the District Court of the United States

Civil Action File No. 45–C–865

Civil Action File No. 45–C–866

Civil Action File No. 45–C–1020

[Titles omitted.]

Order

October 4, 1945

These causes having been heretofore consolidated, and coming on this day for hearing before this court of three judges, one of whom is a Circuit Judge, specially constituted in conformity with the statute in such case made and provided, upon the applications of the complainant-petitioners for relief pendente lite. And the court having examined the complaints or petitions, the answers thereto of the United States of America by the Attorney
267 General of the United States, admitting the averments of said complaints or petitions and that relief as therein prayed should be granted, and the answer of the Interstate Commerce Commission, and the said applications for relief pendente lite, the court having received evidence, heard the arguments of counsel, and being fully advised in the premises, it appears to the court that it has full, complete and perfect jurisdiction in the premises. And it further appearing to the court:

1. Notice of this hearing and application for relief pendente lite was duly served upon the Interstate Commerce Commission and the Attorney General of the United States on October 1, 1945, three days prior to the date of this hearing, as provided by law.

2. Irreparable damage would result to the plaintiff-petitioner, A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, unless relief pendente lite were granted as hereinafter ordered, as appears to the court from evidence submitted to it, namely, the evidence of the witnesses, J. O. McClintock, F. A. Mechling and Norman C. Horn. The nature of such irreparable damage being specifically as follows:

a. As to A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line (hereinafter called the

Mechling Line) it appears to the court from the evidence of said McClintock and Mechling that the Mechling Line would be deprived of a substantial part of its revenue in the only transportation in which it is authorized under the Interstate Commerce Act to engage if the basis of rail charges on ex-barge grain described by the portion of the order complained of herein by the complainant Mechling Line were permitted to become effective under the tariffs filed by the Eastern Railroads in conformity with said order of the Interstate Commerce Commission. Presently, and for many years, the Eastern Railroads have made the
268. same charges for their service in transporting to eastern destinations grain reshipped at Chicago, Illinois, regardless of whether said grain had arrived at Chicago by barge, over the line of the Mechling Line and other barge lines, or by rail over the lines of the Western Railroads, or by vessels over the lakes. The portion of said order of the Interstate Commerce Commission complained of as aforesaid, prescribes a basis of charges for their said service in the transportation of grain that has arrived in Chicago ex-barge that is three cents per hundred pounds higher than for their services for the transportation of grain that has arrived in Chicago ex-rail or ex-lake to the most important eastern destinations, namely, destinations in New England and east of a line drawn northerly and southerly through Buffalo, New York, and Pittsburgh, Pennsylvania; that in event the said prescribed basis of rail charge for ex-barge grain were to become effective, reshippers of grain from Chicago would be unable to sell ex-barge grain in competition with ex-rail grain and ex-lake grain for shipment via rail to the east and the barge lines would be practically excluded from the grain traffic into Chicago for reshipment there by rail to eastern destinations; that said Mechling Line is certified under the Interstate Commerce Act by the Interstate Commerce Commission only as a common carrier of grain; that over ninety per centum (90%) of its revenue in the transportation of grain is derived from the transportation of grain to Chicago, Illinois, for reshipment there to interstate and foreign destinations; that the volume of grain so transported to Chicago for such reshipment there by the Meckling Line exceeded twelve million (12,000,000) bushels in 1944, and like amounts would be so transported by it in 1945, if said rate basis prescribed by said order of the Interstate Commerce Commission were not to become effective; that the rail tariffs that have been filed in conformity with said
269. order by the Eastern Railroads propose to put said rate basis into effect on October 5, 1945, shortly prior to the transportation movement of the 1945 corn crop; that the operation and effect of the new rate basis for ex-barge grain on grain re-

shipped by rail from Chicago, Illinois, to eastern destinations would be immediately to deprive said Mechling Line of a large part of its revenue from the grain traffic, which is the only traffic in which it has been authorized by the Interstate Commerce Commission to engage.

b. As to the Inland Waterways Corporation, it appears from the evidence of Norman C. Horn, that it solicits grain from various origins for barge transportation to Chicago, Illinois, in competition with rail lines serving the same origins, and terminating at Chicago, and that if said basis of rail charges should become effective said Inland Waterways Corporation will not secure for transportation to Chicago as much grain as it would secure if the rate basis presently in effect were maintained, and that the averments of the affidavit of said Norman C. Horn are true.

c. As to the Secretary of Agriculture and the War Food Administrator, it appears to the court from the evidence of James K. Knudson that the public interests represented by the Secretary of Agriculture, that is the agricultural communities in the areas served by barge lines concerned herein will be adversely affected in that the price realized by said agricultural communities for grain will be reduced in an amount equal to the proportional rate differential ordered by the Commission in the order complained of herein, thereby reducing the level of income of said agricultural communities to their great harm.

270 Wherefore, it appearing to the court from the evidence of J. O. McClintock, F. A. Mechling, Norman C. Horn and James K. Knudson, that otherwise immediate, substantial and irreparable damage and injury would result to the plaintiff-petitioner barge lines, consisting of loss of revenue, and to the public interests represented herein by virtue of the statute in such case made and provided, by the Secretary of Agriculture and War Food Administrator.

Now, therefore, it is hereby ordered, adjudged, and decreed by the said Court that pending the hearing and determination of this consolidated cause for the period of sixty days (and for such further period, if any, as the court may hereafter direct according to law) the operations and effect of the order of the Interstate Commerce Commission entered on February 13, 1945, in Investigation and Suspension Docket 4718, Grain Proportionals, Ex-barge to Official Territory, insofar as said order authorizes the imposition of the basis of rail charges therein prescribed for the transportation of ex-barge grain out of Chicago, Illinois, that is differen-

tially less favorable to ex-barge grain than the rates presently in effect, be and it is hereby, restrained and enjoined, and the said Interstate Commerce Commission is restrained and enjoined from permitting to become effective any tariffs or tariff supplements that have been or may be published in conformity with said order of said Commission (including especially Supplement 133 to Agent B. T. Jones' I. C. C. No. 3356 and Supplement 27 to Agent B. T. Jones' I. C. C. No. 3363, issued June 1, 1945, filed with the Interstate Commerce Commission to take effect October 5, 1945) and said Commission is hereby enjoined forthwith to
271 take all steps needful faithfully to observe the said restraints hereby imposed pending the hearing and determination of this cause, including the suspension of said tariff publications.

Entered this 4th days of October 1945 at 3:45 P. M.

EVAN A. EVANS,
Circuit Judge.
M. L. IGOE,
District Judge.
WALTER J. LA BUY,
District Judge.

273 District Court of the United States

No. 45–C–1020

Present: Honorable MICHAEL L. IGOE, District Judge

SECRETARY OF AGRICULTURE OF THE UNITED STATES AND WAR FOOD ADMINISTRATOR

vs.

UNITED STATES OF AMERICA

Order consolidating causes

September 28, 1945

It is ordered by the Court that this cause be consolidated with causes numbered 45–C–865 and 45–C–866 for trial and that this cause be and it is hereby set for trial on October 15, 1945.

277 In the District Court of the United States

No. 45–C–865

No. 45–C–866

No. 45–C–1020

[Titles omitted.]

Transcript of proceedings

Filed Jan. 23, 1946

Transcript of proceedings had and evidence taken in the above-entitled causes before the Honorable Evan A. Evans, Judge of the United States Circuit Court of Appeals for the Seventh
278 Circuit, and the Honorable Michael L. Igoe and the Honorable Walter J. LaBuy, Judges of the United States District Court, in Court Room No. 627, United States Court House, Chicago, Illinois, on Tuesday, the 16th day of October, A. D. 1945, at 10:00 o'clock A. M.

Present: Messrs. Lord, Bissell and Kadyk, by Mr. Edward B. Hayes, appearing for A. L. Mechling Barge Line, Plaintiff. Mr. Luther M. Walter, appearing for Inland Waterways Corporation, Cross-complainant. Mr. James K. Knudson, appearing for the Department of Agriculture, Cross-Plaintiff. Mr. Edward W. Knowlton, and Mr. Daniel Kunkle, appearing for Interstate Commerce Commission, defendant. Mr. David O. Matthews, Special Assistant to the Attorney General; Mr. J. Albert Woll, United States District Attorney, by Mr. Kenneth S. Nathan, Assistant United States District Attorney, appearing for the United States of America, Defendant.

279 The CLERK. 45–C–865, Mechling Barge versus United States, for hearing.

Mr. NATHAN. If your Honors please, I would like to introduce Mr. David C. Matthews, Special Assistant to the Attorney General, appearing in behalf of the United States.

And Mr. Daniel Kunkle, of the Interstate Commerce Commission with Mr. Knowlton whom the court has known before.

Judge EVANS. Proceed.

Mr. HAYES. Pursuant to the order entered at the last session of this court the Interstate Commerce Commission entered its order suspending the tariffs and the supplement therein referred to, and a copy of that order has been furnished by the Commission to the several railroads interested.

I have here a copy of the order that was sent to me by the Interstate Commerce Commission. I will hand it to counsel for the Commission and ask if it may be agreed that this order was entered and has been furnished forthwith on its entry to the railroads interested.

Mr. KUNKLE. That is correct.

Judge EVANS. The Interstate Commerce council says, yes, that is true.

Mr. HAYES. I offer that as Exhibit B, together with the stipulation.

280 Judge EVANS. Received.

(Said document so offered and received in evidence, was marked "Exhibit B.")

Mr. HAYES. I have a number of certified copies to put in, if the Court please.

I believe that there has been transmitted to the Clerk of this court, the original record made in the prior proceeding, which was also kept available before the Commission on the further hearing that was held before it in this matter; and it is, as I understand, in the possession of the Clerk here in court.

The CLERK. Yes, I have it.

Mr. HAYES. I will offer it at this time as "Exhibit C."

Judge EVANS. Any objection?

Mr. KNOWLTON. No objection.

Judge EVANS. Received.

(Said document so offered and received in evidence, was marked "Exhibit C.")

Mr. HAYES. I have also——

Judge EVANS. I take it you are preparing this record, as you understand, on the liability of one side or the other taking it up to the Supreme Court.

281 Mr. HAYES. Forgive me?

Judge EVANS. Are you preparing this record this way, and your opponent, with the thought in mind of taking the case to the Supreme Court?

Mr. HAYES. Well, if the case does go to the Supreme Court, I should much prefer that my opponent should lead the way.

Judge EVANS. I understand; but I mean, you are preparing this record like this with that thought.

Mr. HAYES. That is the thought, your Honor. I have taken pains to give the court a complete record.

Judge EVANS. Very well; go ahead. Otherwise it is just a tremendous lot of lumber here.

Mr. HAYES. I now offer as "Exhibit D" certified copy of the record made at the reopened hearing.

Judge EVANS. Any objection?

Mr. KUNKLE. May I point out to the Court that we have not had an opportunity to examine that record? It appears to be a record before the Commission, and insofar as it is representative of that we have no objection, but we would like to reserve, if possible, the right to supplement that should it appear that there are matters before the Commission that are not included within the record.

Judge EVANS. Received.

282 (Said document so offered and re-received in evidence, was marked "Exhibit D.")

Mr. HAYES. There was offered at the prior hearing a certain tariff supplement filed pursuant to and reciting the portion of the order which is here complained of; and I offer this, together with the certificate of the Secretary of the Interstate Commerce Commission, on the merits, as Exhibit "E."

Mr. KUNKLE. Mr. Hayes, are those tariffs that have been suspended under order of the Court?

Mr. HAYES. They are.

Mr. KUNKLE. No objection.

Judge EVANS. Received.

(Said documents, so offered and received in evidence, were marked "Exhibit E.")

Mr. HAYES. I offer as Exhibit "F," certified copies, together with the certificate of the Secretary of the Commission, of the tariff supplements that were filed cancelling the eight and one-half cent penalty in obedience to that portion of the Commission's order.

Mr. KUNKLE. No objection.

Judge EVANS. Received.

283 (Said document, so offered and received in evidence, was marked "Exhibit F.")

Mr. HAYES. I offer as Exhibit "G" the order of the Commission postponing the effective date of the order here complained of, to June 5, 1945, as Exhibit "G."

Mr. KUNKLE. No objection.

Judge EVANS. Received.

(Said document, so offered and received in evidence, was marked "Exhibit G.")

Mr. HAYES. I offer as Exhibit "H," certified copy of the order reopening the hearing and setting it for hearing before the Commission, which was followed by the supplemental hearing, the record of which I have already introduced.

Mr. KUNKLE. No objection.

Judge EVANS. Received.

(Said document, so offered and received in evidence, was marked "Exhibit H.")

Mr. HAYES. I offer, together with the certificate of the Commission, orders entered by the Commission constituting the A. L. Mechling Barge Line a common-carrier, which are referred
284 to and noticed in the Report under attack.

Mr. KUNKLE. No objection.

Judge EVANS. Received.

(Said documents, so offered and received in evidence, were marked "Exhibit I.")

Mr. HAYES. I have here a certified copy of the order of the Commission under attack, but it is set forth in the complaint; and I will ask counsel, in order to save record, to agree that the order as set forth in the complaint may be received and accepted.

Mr. KUNKLE. We agree to that.

Judge EVANS. Received.

Mr. HAYES. There is one feature of the record further, perhaps two, upon which record can be saved if counsel will agree with me.

There appears on page 48 of the Bill of Complaint as filed by the Mechling Barge Line, a statement by the Commission which I believe to be wholly without any evidence, like some others, but this one is one in which record can be saved if agreement can be arrived at.

The statement to which I refer is this:

"Protestant-petitioners concede that they"—that is, the
285 existing rates on ex-barge grain—would be inappropriate for the ex-barge traffic if, like the intermarket proportionals, they had been prescribed by us instead of being voluntarily established by the respondent carriers."

Apparently, the Commission is seeking to convey by that statement that there was a concession before it by the protestant-petitioners here complaining of this order, that if the rates now existing had been established by the Commission, they would be inappropriate if they had been prescribed by the Commission instead of being voluntarily established by the respondent carriers.

There was no such concession. I do not wish to encumber the record with any argumentative presentation before the Commission, although I have it here under certificate, if counsel is free to concede that that construction of the Commission's remark is unfounded.

I may say I have spoken to counsel for the Commission on that score approximately a month ago, so that I am not taking anybody by surprised by that request and an opportunity to examine the record in that connection has been afforded.

Mr. KUNKLE. If the Court please, Mr. Hayes is here asking the Commission to concede as error a statement made

286 in the report which is under scrutiny by this court. It is true that Mr. Hayes spoke to me a month ago stating that a certain concession had been made, or that a certain statement that the petitioners had made a concession was in the report, and he would like me to stipulate that that was not the fact.

I told Mr. Hayes at that time that if he would point out the particular statement in the report that I would examine the record and the persons responsible in the preparation of the report, and if what he said was the fact I would be willing to stipulate that as the fact. But this morning is the first knowledge of the particular matter which he had in mind that I have received, and I am not in position at this time to make any stipulation that a statement in the report is inaccurate.

I would suggest if Mr. Hayes has the record prepared by which he intends to demonstrate the inaccuracy of that statement, why, he should present it in evidence.

Mr. HAYES. I am not going to quarrel with Mr. Kunkle's statement as to what occured at our conference. I have the record here, and I shall ask him, from that record which I present, to demonstrate the accuracy of the Commission's statement. There is nothing in there; and the only thing I can do to prove a negative is to say it is not in there. If he wants to find it, it will be
287 there for him to search for.

Mr. KUNKLE. If the Court please, I am interested in keeping this record as small as reasonably possible. I am willing to do now what I told Mr. Hayes I would do before now that I have the precise information as to the particular matter which he claims to be erroneous, and if upon my examination of the record I find his present statement to be correct, I think the Commission will be then ready to stipulate the matter so as to avoid the introduction in evidence of that portion of the record which he claims sustains his position.

Mr. HAYES. Perhaps we can apply that same rule to a further matter which can be got to very quickly, and which was also mentioned at our conference. It is true I did not give Mr. Kunkle our references to the report but I did call attention to the specific parts that I had in mind at that time.

On page 19 of the bill as filed by Mechling, the Commission says:

"The parties generally adhere to their original position; that is, protestant-petitioners contend that the ex-barge traffic is entitled to proportionals no higher than the ex-rail and ex-lake traffic"—

We will comment on that in connection with the further statement on page 51, which is:

288 "Protestant-petitioners ask that on the ex-barge traffic to trunk-line and New England territories we prescribe uniforms proportionals regardless of origin."

Now, that is not so. The same argumentative material well and amply meets that. What we are asking, and what we asked the Commission for we have in here. It is clearly stated on pages 6 and 7 of our brief before the Commission.

When the grain comes from the same western origin to Chicago, that is, to Chicago by rail or by barge, then the grain from that same origin territory should have the same out-bound charge for the rail service east.

Now, that is of some importance. The Supreme Court in its opinion said it was erroneous to say we could have the same proportionals regardless of origin. Whether or not the protestant-petitioners who were then before the Commission took the position attributed to them by the Supreme Court on the strength of that Commission report, is not the point now. What we want to make very plain here is that our position before the Commission was not, never has been, and is not before this Court, that origin has nothing to do with what the Commission can in its power do.

289 Our position is, that just so long as they make the ex-rail rates regardless of origin, then to make the difference on all origins ignoring in fixing the rate on the rail-borne grain as a basis for a discrimination against the ex-barge grain, is a violation of the Act.

Judge EVANS. I don't quite see any merit in your statement, personally, what you want to point out as erroneous. In the first place you say, you want to show that the parties generally adhere to their original position.

Mr. HAYES. I do not want to say that.

Judge EVANS. That is here. Well, that is what you have got stated here. I marked it on page 19. It appears there that both sides will adhere to their original position, and they will adhere to that right to the next court, too. I do not see how any attempt on your part to show that that statement may be erroneous will have any bearing on the outcome of this case.

Now, that next one. You say you are going to show that this Commissioner on page 51 was wrong when he said that "on ex-barge traffic we prescribe uniform proportionals regardless of origin."

Now, it strikes me that in the course of an argument that that would not be a good point for you to advance to show that the Commissioner did not get the position. But what difference does it make? There is what he says. You say he is wrong.

290 There is no need of any proof to show me whether it is

wrong. You are asserting to us that that was not your position, and never has been.

And the third one seems a little bit more ridiculous than the other, namely, that somebody in his opinion misstated a fact or insinuated something that was not so, namely, that "if the proposal had been made by us it would not have been as bad as if it was made by the Commission." Just what difference does that make whether he said that if he did say it?

Mr. HAYES. I appreciate fully your Honor's thought, but yet I do not want counsel for the Commission in his argument to tell me that I am now taking a position inconsistent with what I took before the Commission.

Judge EVANS. Well, the answer to that is, if your position was sound at any time it is going to be sound clear through; and if it was not sound, the mere fact that they said that "we would like you to initiate it instead of the other fellow," thereby the stigma would have been taken out, seems like a little child's play.

Mr. HAYES. It is, perhaps, from a superabundance of caution. I will ask that this be marked and received as Exhibit "K" and then if the stipulation is filed it can be withdrawn and be no part of the record.

Judge EVANS. Subject to that understanding, all right. If you wish later on to agree, if you find there was an
291 erroneous statement, or anything of that kind.

Mr. HAYES. I have now Exhibit "L," which is the last, and which is a certified copy of the application to the Commission to reopen this hearing, which I offer as Exhibit "L."

Judge EVANS. No objection. It may be received.

(Said document, so offered and received in evidence, was marked "Exhibit L.")

Mr. HAYES. Your Honors, I shall speak on behalf of A. L. Mechling——

Judge EVANS. Now, let us get on. Have you offered all you want to offer?

Mr. HAYES. I have offered all that I want to offer. I don't know whether the Commission has any evidence to offer.

Judge EVANS. That is what I want to know. Do you have anything to offer?

Mr. KUNKLE. We have nothing to offer.

Judge EVANS. Does anybody else here have anything to offer?

(No response.)

Judge EVANS. Now, who represents whom here today?

Mr. HAYES. I represent the plaintiff-petitioner, A. L. Mechling Barge Line.

292 Judge EVANS. Who represents the United States?

Mr. HAYES. The United States is represented by Mr. David C. Matthews. An answer has been filed on behalf of the United States and he will state his position if the Court desires.

Judge EVANS. What position do you take?

Mr. MATTHEWS. Your Honor, the United States has filed an answer in each of these three cases, asking that the plaintiff's petition be granted, and that we would be willing to state our position.

Judge EVANS. You are sort of a copetitioner.

Mr. MATTHEWS. Something of that sort.

Judge EVANS. Now, whom do you represent?

Mr. KNOWLTON. I represent the Interstate Commerce Commission, and Mr. Kunkle does also, sir.

Judge EVANS. You do not concede the propriety of the petition?

Mr. KUNKLE. We are in defense of that order.

Judge EVANS. You and the Attorney General, then, are on opposite sides.

Mr. KUNKLE. That is correct. I suggest to the Court that the United States is a statutory defendant.

Judge EVANS. Yes.

Mr. KUNKLE. And has fulfilled its function when it confesses error.

393 Judge EVANS. Yes, I understand.

Mr. KNUDSON. I represent the Secretary of Agriculture, your Honor. My name is James K. Knudson.

Judge EVANS. Which side are you on?

Mr. KNUDSON. We are coplaintiffs in this case lined up with the Barge Line.

Judge EVANS. And Mr. Walter?

Mr. WALTER. I represent the Inland Waterways Corporation, coplaintiff in C-866. We attack the order as void as it applies to us.

Judge EVANS. Well, I think under the circumstances and in view of the ruling—well, first, does anybody else want to introduce any evidence? If not, the testimony is closed.

Now, I think the only person we want to hear from, and we will hear from him first in view of the order that was previously made here a few weeks back, will be the Interstate Commerce Commission. I forget right now, I should know your name well enough.

Mr. KNOWLTON. Knowlton.

Judge EVANS. Mr. Knowlton. Mr. Knowlton was not in position to discuss the defense that depended upon the facts, and he said that you, or somebody else, had gone to another hearing

somewhere else and could not come here. He advanced the
294 legal objections to the propriety of the action which the plaintiff was seeking to have the Court take.

Now, we have heard him on it, and I think we might, if you have got anything to say, hear a statement of the factual situation and we will be glad to hear you; otherwise, we have heard the case.

Mr. KUNKLE. Does your Honor mean the factual situation relating to the jurisdictional question that is possibly in this case? Or do you desire an argument based upon the merits of the case as disclosed by the facts before the Commission?

Judge EVANS. I would think probably the latter.

Judge IGOE. That is what I would think.

Argument on behalf of the Interstate Commerce Commission

By Mr. KUNKLE:

May it please the Court: The complaints in this case attack the validity of an order of the Commission. The order in its terms is a permissive one. It in effect directs the cancellation of certain tariffs that were at issue in the proceeding before the Commission, and that is all the order in and of itself does.

In the report of the Commission, leading up to that order,
295 the Commission gave consideration to the establishment of rates on ex-barge grain traffic out of Chicago at a level different than the level of rates applicable on that traffic which are presently in effect, and different than the level of rates which were proposed under certain tariffs which were then ordered to be cancelled.

As the Court is probably aware, this case had its origin some years ago. The Commission did, or, rather, the Eastern carriers proposed to subject ex-barge grain traffic to the proportional rates which were in affect, or to the local rates which were then in effect on movements out of Chicago to eastern destinations, and thus to deny to the ex-barge grain traffic the use of certain proportional rates which were then being applied to that traffic.

The Commission upon protest suspended those tariffs and entered into an investigation concerning the lawfulness of the local rates as applied to the ex-barge grain traffic.

After its own powers of suspension had been exhausted during the pendency of the proceeding before it, the rail carriers voluntarily suspended those tariffs, so that net result has been that this ex-barge grain traffic has since 1933 and up to and including today, been enjoying the use of certain ex-rail proportionals on the outbound movement from Chicago.

296 The Commission ultimately determined, and in so doing it denied the argument advanced by the protestants, that

he ex-barge grain traffic was entitled, as a matter of law, to the same rates that the ex-rail traffic enjoyed; and in so deciding the Commission held that the application of the local rates, in the ight of the record then before it, to the ex-barge grain traffic, would not be in violation of any provision of the Interstate Commerce Act.

As your Honors will recall, the report and order was challenged n this Court and subsequently reached the Supreme Court. The Supreme Court sustained the validity of the Commission's action and the soundness of the Commission's finding contrary to the position of the protestants, namely, that there was no absolute requirement under the Interstate Commerce Act that ex-barge grain traffic should and must receive the same out-bound proportional rates as the ex-rail traffic enjoys.

And following the statement made by the Commission in its original report, that the record was not adequate for it to determine what the proper level of rates should be to govern this ex-barge grain traffic, the Supreme Court's opinion was narrowed o the proposition that the Commission, based upon the record t then had, was not at fault in finding that the proposed tariffs were not unlawful based upon the legal proposition advanced by the protestants.

Following that decision of the Supreme Court, petitions ere filed with the Commission by these present plaintiffs asking hat the proceedings be reopened for the purpose of providing a ecord upon which the Commission could, if it should deem fit, determine whether this particular traffic should enjoy an out-bound ate level lower than the local rate which the carriers had roposed.

Additional evidence was taken and the Commission; in Februry of this year, issued its report which is now the subject of e present suits.

I take it that the issues before this Court in this proceeding are hether or not the report of the Commission provides a rational sis for the conclusions that it reaches, and whether or not the identiary finding of the Commission upon which its ultimate nclusion rests has substantial support in the record.

And that is important, as the Commission also deemed it important in the preparation of its report, to very clearly and probly superficially advise the Court as to what the real rate situion is with respect to the movement of grain.

Grain comes into Chicago by various modes of transportation, principally by rail, by lake, by barge, and by truck.

On the out-bound movement of grain from Chicago——

Judge EVANS. That means east, I suppose?

Mr. KUNKLE. East of Chicago, to destinations in what is known as Official Territory, which itself is divided into Central Freight Association Territory, Eastern Trunk Lines Territory and New England Territory.

On ex-rail grain arriving at Chicago and subsequently moving to Eastern destinations, there were three levels of proportional rates applicable upon that Eastern movement based upon the origin of the grain west of Chicago. These proportional rates were the Northwest proportional rate which, as its name indicates, are applicable to grain originating in the northwest; the Trans-Mississippi proportional rate which, so far as the Central Freight Association Territory is concerned, varied from that of the Northwest proportionals, applied on grain originating in the Southwest Territory generally speaking; and the Illinois proportional which was applicable on grain from points in Illinois.

As I say, to destinations in Central Freight Association Territory, the rail proportionals out-bound varied as between the Northwest, Trans-Mississippi, and Illinois, notwithstanding that the identical service was involved in the movement from Chicago to a point in Central Freight Association Territory, and there
299 would be a different rate on that movement out-bound depending upon the western origin of that grain.

On points in Eastern Trunk Lines Territory and New England Territory, the same proportional rate was applicable regardless of origin.

The rates on grain had been fixed and prescribed in reference to the over-all movement of the grain from country gathering points, through the primary and intermediate markets, to ultimate destination. The combined rate on grain moving by lake to Chicago and thence by rail to Eastern destinations, involves a three-factor rate; one, the rail rate to the head-of-the-lakes; the shipping charges by boat to Chicago; and the rail rate out of Chicago.

In the far western territory there are three-factor rates, being the gathering rates to the first market, and then the rate to the primary market, and then the rate to the Eastern destination. These rates have been considered by the Commission and established in numerous proceedings. The Commission has undertaken an extensive investigation of the grain rate structure and in the course of many years the Commission has developed a rate structure applicable to all-rail traffic which has been applied to all movements of rail grain.

In the course of, or rather, at the beginning of the
300 movement of rail grain by barge into Chicago, which I think commenced in 1933, the out-bound proportional rail tariffs had never been devised to cover that type of movement. The result was, that because certain tariffs of proportional rates pro-

vided that the proportional rates should be applicable upon grain arriving at Chicago by boat, which at that time contemplated lake boat, this barge grain was subjected to the rail proportional rates out-bound from Chicago.

In other words, grain originating at Illinois points was given the benefit of the proportionals applicable of rail grain that originated at Northwestern points, and that would be a different proportional when destined to Central Freight Association Territory than the rail grain which originated at comparable points in Illinois.

The result of that anomalous situation which arose was that there was a disparity in the grain rates from points in Indiana and Illinois to Central Freight Association Territory and to other Eastern points; that there was a disruption of the whole scheme under which these rates had been prescribed and developed by the Commission, and therefore, for that reason, the Commission—as one of its reasons, the Commission held that the ex-barge grain was not, as a matter of law, entitled to identical rates that the rail grain received.

301 Judge IGOE. What was the reason that they were not entitled to that?

Mr. KUNKLE. Because it made the combination of rail-barge rates, as compared with the all-rail rates from various origin points in Indiana to Central Freight Association Territory and any Eastern destinations, out of line with the general scheme of the rate structure which the Commission had adopted to cover these movements when moving East by rail.

In other words, it developed that the rate where the combination barge to Chicago rate and the rail rate beyond Chicago, would be a less rate than the all-rail rate from an origin substantially east of the barge origin. In other words, you would have what is called numerous extra fourth-sections departures; a lower rate for a longer distance.

Judge IGOE. What is wrong about that?

Mr. KUNKLE. Well, in other words, you pay more for a shorter haul than you do for a longer haul. In other words, Morris, Illinois, for example, to take a point in Central Freight Association Territory, the total mileage of the barge plus rail is substantially greater than from a point east of Chicago to the same destination, and yet the Morris barge-plus-rail rate would be less than the shorter all-rail haul.

302 Judge IGOE. In other words, if you want to get the benefit of good barge rates you should live in Morris, Illinois.

Mr. KUNKLE. Yes; and if you want to be placed at a rate disadvantage, live one hundred miles east of Morris and have to pay more to get your grain to the same destination.

Judge IGOE. Why should we penalize the people that live in Morris?

Mr. KUNKLE. It is not penalizing the people that live at Morris, it is penalizing the people that live east of Chicago who must pay more for less service. As I say, that is simply an example of what the application of these proportional rates to those barge rates was accomplishing: It was breaking down the whole grain rate structure.

Now, the Commission in its report that is here under consideration finds that a certain level of rates applicable to ex-barge grain traffic, less than the local rates which the rail carriers wanted to put into effect, but yet higher than the ex-barge rail proportional rates, would not be unlawful or in violation of any of the provisions of the Act, and that it would not unduly influence the movement of barge traffic, and that the over-all result of that schedule of rates would provide a rate structure most equitable to everyone concerned.

303 Now, I apprehend that the Court's problem here in the final place is to find whether the ultimate conclusion of the Commission has rational basis in the report.

Judge EVANS. Doesn't it come to this, that under the schedules that are authorized the rates that may be charged, there is discrimination against water competition, water carriers?

That was the crux of the decision before and the Supreme Court voided it or reversed it on the theory that the Commission had not yet ruled on the question fully. But the law was enacted, only generally in the first instance but more specifically was this, that there should not be discrimination against water competition. Grain that is being hauled out of Chicago east has certain charges, call them what you wish, finishing or what not, but what they are doing is to charge more if the grain comes to Chicago by water than if it comes by railroad. Likewise they except water on the lakes, but in substance when you get down to it it is this water competition of the Illinois Drainage District or the river.

Can you possibly uphold this rate except by saying that this is not a descrimination against the river on grain that is brought in by water, fresh water?

Now, to make long speeches in your argument to show that
304 after all one hundred bushels of wheat that was brought in by barge ought to pay more to go from Chicago to New York, is just the same, does absolutely the same in favor of the railroads as you are doing to the lake competition over the barge line.

Mr. KUNKLE. What you say is true, your Honor, if you consider merely the eastern leg of one transportation service.

Judge EVANS. Well, that is what the rate is, isn't it?

Mr. KUNKLE. Yes; but with the fixing of that rate, being a proportional rate, it partakes of the inherent characteristics of a proportional, namely, a portion of a through rate.

Judge EVANS. Now, that argument was made before and rejected and we were reversed; and I felt at first that it must be we did not understand it. Then upon a more thorough reading of Judge Jackson's opinion it rather seemed to me that it was because it was more or less tentative, had not yet reached finality, and they upheld it. But if you just remove all the form and verbiage and get right down to it, what is there other than a discrimination against a man who has a bushel of wheat that has been brought in by water, over the railroad?

It may be we have got to go still further, but just the same the ultimate effect is a discrimination against water competi-
305 tion in favor of the railroad competitor out here, and not the Great Lakes competitor.

Now, that is bothering me and I cannot get at the remedy. We had it so clear the time before, I thought it was clear, and then we were reversed. Now, that is what I have got to be enlightened on before I can say that this rate should be upheld.

Mr. KUNKLE. While we speak of the rate out of Chicago, what the Commission is dealing with is the rate from origin from, say, from a point west of Chicago, and what the total rate will be to transport a given shipment to its ultimate destination in the East.

Now, if the rate by barge to Chicago on a given shipment, plus what the Commission says is a reasonable rate for rail movement on that shipment to its final destination, if the sum of those two rates is less than it costs some other shipper to ship by rail to Chicago and then to the same destination by rail, the discrimination if any exists—and I won't call it discrimination—but the disparity, if any, which exists is in favor of the barge-rail shipper.

Judge IGOE. What is wrong about that?

Mr. KUNKLE. Nothing. The Commission recognizes that in the rate prescribed.

Judge IGOE. Why do you penalize him?

Mr. KUNKLE. We don't penalize them. In other words——
306 Judge IGOE. That is the effect of it.

Mr. KUNKLE. The rates the Commission prescribes on the over-all makes it cheaper for a shipper to ship by barge and rail than for another shipper to ship all-rail.

Judge EVANS. He naturally has that right because of the rate by barge to Chicago.

Mr. KUNKLE. As to the quantity of that disparity that he should have, it seems to me that that is a matter for the Commission. Now, the Commission——

Judge EVANS. That is where we differ, and that is where I find it hard to follow you. Only by discriminating against the water competition by adding an extra rate from Chicago on can you effectually, as you say, equalize the rates, the total over-all rates; and only when you do that can this be accomplished by picking out the water competition and adding to the grain which he can haul into Chicago, a sum that will make it unprofitable or inadvisable, maybe, to ship by water from a point in Illinois to Chicago. Now, I just cannot see how that can be called a nondiscrimination against the water competition.

Mr. KUNKLE. In this respect: the Commission in this case has found that to apply the local rate on to these shipments, as the rail carriers would do, would affect the flow of traffic and be an unreasonable thing.

307 Now, the Commission thereupon proceeded——

Judge EVANS. Now, the railroad specifically, by revising the rates, as it can and does, intends to divert business from the water.

Mr. KUNKLE. No; the Commission found exactly the opposite They said it would not divert it to any substantial degree.

Judge IGOE. That is, if you apply the local rates to that product out of Chicago?

Mr. KUNKLE. No; it meant diverting it from the barge to the rails.

Judge IGOE. If you applied that local rate from here East, it would divert it from the barge to the rails.

Mr. KUNKLE. Yes. I think that while the Commission did not specifically say so in the second report, I think that is a fair inference to be gathered from it.

Judge IGOE. Yes; but if you gave the barge-carried product the benefit of your proportional rate from here East, why that would not divert any traffic from the barge line.

Mr. KUNKLE. Benefit of the rail proportionals?

Judge IGOE. Yes.

Mr. KUNKLE. No; it would not divert any traffic.

Judge IGOE. Of course not.

Mr. KUNKLE. But the Commission found that there were

308 certain characteristics of the service, as between all-rail and barge-rail, which justified a different rate treatment.

Judge EVANS. They justified it as sort of an economic theory of distribution over the two hauls; one west into Chicago and one east from Chicago on. But they ignored the fact that in so doing they are discriminating against water competition.

The haul from Illinois to Chicago is a certain amount, we will say, 20 cents; and from Chicago east it is 25 cents. Now, they say, in order to equalize the shipment, not only here but farther west, we will add to the man who is charged only 20 cents, 5 cents more or two cents more, or one cent more, I don't care what it is, only one cent more, and in so doing I cannot see how possibly he was not discriminating against the fellow that shipped by water out here.

You say, taking into consideration all the circumstances, he has got a pretty low rate from Illinois to Chicago from central Illinois, therefore I will just add something to him to put him on an equality with the fellow shipping from the Northwest, or somewhere else, all by rail, who hasn't the benefit of water competition.

So what you have is, you are adding to the burden of the
309 water and that, I take it, is a Constitutional prohibition against even the power of the Interstate Commerce Commission.

Mr. KUNKLE. I don't think that your Honor has stated the reasons that guided the Commission in arriving at this conclusion. I think the report on this is very clear, both as to the Commission's reasoning and as to why it applies a different rate on this traffic than it does to all-rail traffic.

May I call your Honor's attention to the report of the Commission in the Inland Waterways complaint at page 32, where the Commission says this:

"Where, as here, ex-rail and ex-lake proportionals or specifics reflect average circumstances and conditions surrounding the all-rail and lake-rail transportation which differ from those affecting the barge-rail transportation, we conclude that ex-barge proportionals may properly vary from the ex-rail and ex-lake proportionals or specifics to the extent warranted by such differences."

And then it enumerates categorically what those differences are. You see, the Commission is properly treating this not as just the
310 eastern leg of the journey—if that were true I can see the force of your Honor's comment—but they treat this, as they necessarily have to treat it, as one through act of transportation.

Now, whether that is performed by one or two rail carriers, or whether the through act is performed by a water carrier and a rail carrier, or a lake carrier and a rail carrier, it is the over-all picture, the over-all service and the characteristics of the service upon which the Commission has differentiated in prescribing the rates. But so long as the Commission adopts proper differentials, its decision is within its competence, and that is exactly what it has done here.

It says that the barge-rail transportation is different than the all-rail transportation. The characteristics of the service are different, and therefore a different rate can be applied to it; not to just one leg but to the over-all transportation service, without a violation of the law and in consonance with the law, because the law specifically recognized that there is a differential in rates between water-rail and all-rail.

May I call your Honor's attention to Section 307 (d) of the Transportation Act of 1940, which provides that

"The Commission may and shall, whenever deemed by it to be necessary or desirable in the public interest, after full hear-
311 ing upon the complaint" and so forth, "establish through routes, joint classifications, and joint rates, fares or charges, applicable to the transportation of passengers or property by common-carrier by water, or by such carriers and carriers by railroad, maxima or minima, maximum and minimum to be charged and the combination of such rates, fares and charges, and the terms and conditions under which such through routes shall be operated. In the case of a through route where one carrier is a common-carrier by water, the Commission shall prescribe such reasonable differentials as it may find to be justified between the all-rail rates and the joint rates in connection with such common-carrier by water."

Now, there, we submit, is statutory affirmance of the right of the Commission in dealing with all-rail on the one hand and barge-rail on the other, to make a differential in the charges.

Now, the mere fact that one may be a joint rate by rail and water, and one transportation may be a combination of pro-
312 portionals, that is merely a method of rate making, and it does not affect the inherent characteristics of the through transportation service.

Judge EVANS. Then the same Section reads:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof," and so forth.

The idea was that they shall administer and recognize and preserve the inherent advantages of each. The inherent advantage of this locality in Illinois of water competition is, by the Interstate Commerce Commission, being destroyed or defeated so that
313 there would be, under the guise of a differential, or what they call a just rate, a loading up of this advantage that naturally lies with the water competition, by adding to it a freight rate from Chicago on. That is the way it strikes me.

Mr. KUNKLE. Well, I think your Honor's proposition as to that has been answered by the Supreme Court. The question of the effect of the National Transportation Policy was vigorously argued to the Supreme Court. The Supreme Court held that that did not prevent the Commission from prescribing a different level of proportionals applicable to ex-barge traffic than to ex-rail.

Now, I think it can be demonstrated quite convincingly from Table 4 or Table 5 in the Appendix to the Commission's report, that what the Commission was considering and properly considered, was the over-all transportation service and the combination of charges covering that service.

Now, Table 5 appended to the Commission's Report shows the barge rates to Chicago, and the average barge-rail combination via Chicago under the present rate, which was the application of the proportionals; under the proposed rates, which is the application of the locals; and under the prescribed rates, which is the scale the Commission fixed. And that table clearly demonstrates that the combination of the rail, the barge-rail rate under the proportional prescribed, considering the transportation,
314 from origin to ultimate destination, is more favorable than the all-rail combination.

Therefore, I say to the Court that if the reasoning of the Commission in arriving at the conclusion it did as to the proper level of these rates, is based upon evidentiary facts set out in the report, and we submit those facts are sustained by the record in this case, therefore I say that this order of the Commission is unassailable.

Judge EVANS. We come to the very interesting situation here, that apparently this Court as it now stands, three members of the Court, not counting Judge Jackson as a majority—there are four members who were opposed to you there. Maybe your opponents are asking them for a new deal, just on the chance that they may draw an ace the next time. But we want the Commission to so treat the water competition in a manner that tends to give it full advantage of its inherent quality and superiority. And we still feel that way.

I think there is only one way to do it, and in view of the reasonableness of your presentation, the only thing is to take it up again

and thresh it out once more. This time they will have gained something; you haven't got the differential which you said was so important. It is not merely as important this time as it was
315 the last time. You have yielded something.

Mr. KUNKLE. I think the Commission based it upon the supplemental record which it had before it; weighed the facts——

Judge EVANS. Yes; that is the argument. That is an argument in favor of the validity of its order. But I think the fact is, whatever you may have said before as to the righteousness of your judgment, you found they were not as righteous as you thought, but you have revised them and you do not discriminate against the water only about one-fourth as much as you previously did. Consequently, they have another hold on you. In other words, they have got about five of your Commissioners, and that is a majority this time.

Mr. KUNKLE. There are five. There was substantial dissent. I do not know whether it is different now from the last time.

Judge EVANS. Now, maybe that indicates they have thought that out better and that greater weight should be given to the decision, because every one of them is in there now this time. It was one thing, at least.

Now, I do not think there is much to be gained by further argument on the matter. Maybe it is just plain stubbornness——

Mr. KUNKLE. I was going to suggest to your Honor, in
316 view of the changed condition in the Supreme Court, it might be equitable to this extent to let the other side lead the way this time instead of us.

Judge EVANS. Well, that is all right, but that would be paying so very little attention to the opinion of the lower court. After all, we take ourselves more seriously than either the counsel or the Supreme Court. We rather think we ought to decide it as we see it.

Mr. KUNKLE. Exactly. I agree with you perfectly.

Judge EVANS. And this case is no different from any other. If we thought that you were right, although our opinion may not be worth much, we would so say and let them take the appeal.

Mr. KUNKLE. I was only saying that facetiously, your Honor. I would not suggest you would do anything other than decide the case the way you thought it should be decided.

Judge EVANS. You may present the findings, and you get together, gentlemen, and then submit them to your adversary and do it as promptly as possible.

Mr. HAYES. Well, it should be very promptly.

Judge Evans. Send them to your opponent before you send them to us.

Mr. Hayes. We will do that.

Mr. Kunkle. Your Honor, if by any chance we should
317 not be able to get together on the proper findings and conclusions, may we submit them separately?

Judge Evans. Yes.

Mr. Knowlton. I take it by "promptly" you will allow for mail time between here and Washington.

Judge Evans. We will allow you two or three weeks. This is a matter that ought to be disposed of, I think. You can get that pretty fast; you ought to be able to get to the Supreme Court pretty fast. You have an absolute right to go there.

Judge Igoe. What are you suggesting as to the time in which you could get them in?

Judge Evans. Can you get them in and ready for us in two weeks?

Mr. Hayes. Yes, your Honor; probably before that.

Judge Evans. Two weeks, then. And then you may have ten days as a reasonable time in which to go over them and approve them or to point out the ones you are going to except to.

And that being so, we will now recess.

Which was all of the evidence offered and all of the evidence received and proceedings had on the hearing of said cause.

318 In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 45–C–865

A. L. Mechling, Doing Business Under the Trade Name and Style of A. L. Mechling Barge Line, plaintiff

vs.

United States of America, defendant, and Interstate Commerce Commission, intervening defendant

No. 45–C–866

Inland Waterways Corporation, plaintiff

vs.

United States of America and Interstate Commerce Commission, defendants.

No. 45–C–1020

THE SECRETARY OF AGRICULTURE OF THE UNITED STATES, AND THE WAR FOOD ADMINISTRATION, PLAINTIFFS

vs.

UNITED STATES OF AMERICA, DEFENDANT, AND INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT

CERTIFICATE

I hereby certify that the above and foregoing is a full, true
319 and accurate transcript of my original shorthand notes taken upon the hearing of the above-entitled matter, on the 16th day of October A. D. 1945, at ten o'clock A. M.

HARRY A. HARNDEN,
Official Court Reporter,
United States District Court,
Northern District of Illinois.

321 In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action File No. 45–C–865

A. L. MECHLING, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF A. L. MECHLING BARGE LINE, PLAINTIFF, *vs.* UNITED STATES OF AMERICA, DEFENDANT

INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT

Civil Action File No. 45–C–866

INLAND WATERWAYS CORPORATION, PLAINTIFF, *vs.* UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action File No. 45–C–1020

THE SECRETARY OF AGRICULTURE OF THE UNITED STATES AND THE WAR FOOD ADMINISTRATOR, PLAINTIFFS, *vs.* UNITED STATES OF AMERICA, DEFENDANT

INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT

Findings of Fact and Conclusions of Law

Nov. 26, 1945

322 This cause coming on to be heard and the court having heard arguments of counsel and being advised in the premises now makes the following

FINDINGS OF FACT

(1) A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, plaintiff in Civil Action No. 45 C 865, hereinafter called "Mechling," is a common carrier by water subject to Part III of the Interstate Commerce Act operating a barge line on the Illinois River and Waterway and the Mississippi River, by means of which he transports grain in interstate commerce from various ports on said waters to Chicago, Illinois, for reshipment at Chicago to interstate and foreign destinations located easterly therefrom.[1]

(2) Inland Waterways Corporation, operating Federal Barge Lines, plaintiff in Civil Action No. 45 C 866, hereinafter referred to as "Federal," is a common carrier by water subject to Part III of the Interstate Commerce Act operating a barge line on the Illinois River and Waterway and Mississippi and Missouri rivers, by means of which it transports grain in interstate commerce from various ports on said waters to Chicago for reshipment at Chicago to interstate and foreign destinations located easterly therefrom.

(3) The Secretary of Agriculture of the United States, one of the plaintiffs in Civil Action No. 45 C 1020, is a duly appointed cabinet officer of the President of the United States of America in charge of the Department of Agriculture, and is authorized to make complaints to the Interstate Commerce Commission, hereinafter referred to as the Commission, with respect to rates, charges, tariffs, and practices relating to the transportation of farm products and to prosecute the same before the Commission and to appear as a party in original and appellate judicial proceedings involving the Commission's determination. The War Food Administrator, the other plaintiff in Civil Action No. 45 C 1020, is a duly appointed officer of the United States similarly authorized.

[1] Mechling has been certificated as such by the Interstate Commerce Commission in collateral proceedings.

Said War Food Administrator is also authorized to formulate and carry out a program designed to furnish a supply of food adequate to meet military, civilian, and foreign requirements, both for human and animal consumption and for industrial uses, and to take all appropriate steps to insure the efficient and proper disposition of the available supply of food.

323 (4) Grain is also transported to Chicago, Illinois, by rail[2] and by lake steamer for reshipment to interstate and foreign destinations lying easterly of Chicago.

(5) The Western Railroads so transporting grain to Chicago serve, among many others, most of the origins served by the barge lines in this grain traffic to Chicago and compete with the barge lines for the grain brought to Chicago.

(6) The lake steamers bring grain to Chicago from various ports on the Great Lakes, of which Duluth, Minnesota, is the most important in respect to domestic grain. At times, said lake steamers also bring substantial quantities of foreign grain to Chicago, both from Canada and from other continents, said latter grain being imported via the St. Lawrence Waterway.

(7) The grain so brought to Chicago by rail, lake steamers, and barge is transported therefrom to interstate and foreign destinations lying easterly thereof by the Eastern Railroads[3] which were the respondents and defendants in the proceeding before the Commission known as Grain Proportionals, Ex-Barge to Official Territory, I & S Docket 4718, in which was issued the order sought to be enjoined in this cause. The incoming lines of the Western Railroads, and the plaintiff barge lines, are connecting lines of carriers, as defined by Section 3 (4) of Part I of the Interstate Commerce Act, of the Eastern Railroads via which said grain is shipped out of Chicago.

(8) Typically, this grain is temporarily stored on arrival at Chicago in elevators from which it is delivered into the cars of the Eastern railroads for out-movement to the east. The movement of grain from the west through the Chicago elevators to the east

[2] The Western Railroads, whose lines end at Chicago, include the Alton Railroad, Atchison, Topeka & Santa Fe Railroad, Chicago, Burlington & Quincy Railroad, Chicago & North Western Railroad, Chicago, Great Western Railroad, Chicago, Milwaukee, St. Paul & Pacific Railroad, Chicago, Rock Island & Pacific Railroad, Illinois Central Railroad, New York Central Railroad and Wabash Railroad.

[3] The Eastern Railroads include, for example, the Baltimore & Ohio Railroad Company, Erie Railroad, New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, and the Chesapeake and Ohio Railway Company.

is one of the conspicuous national streams of interstate commerce. Chicago is the greates grain reshipping point in the world.

(9) Grain moving to and stored at Chicago in this stream of commerce is sold on the basis of delivered prices to Chicago dealers. The cost of the inbound transportation (as represented by freight rates and other incidental charges) is borne by the producer or shipper of inbound grain. The net price received by such producer or shipper varies inversely with the amount of the inbound transportation cost so that the benefit of any lowered cost of inbound transportation accrues directly to the producer and inbound shipper. The delivered prices so paid by Chicago dealers are uniform, regardless of the mode, cost or length of inbound transportation, so long as the grain purchased is treated on a parity with all other grain in respect to transportation charges assessed for outbound movements.

Appendices to the reports of the Commission in the proceeding in which was entered the order sought to be enjoined in this cause show by years the receipts and shipments of grain from Chicago according to species and mode of transportation. (246 I. C. C. 353, 383; 262 I. C. C. 7, 41) For the period from 1933, when movement of grain by barge to Chicago was resumed upon completion of the Illinois Waterway, through the first ten months of 1943, the totals of such yearly figures are as follows:

324 GRAIN RECEIVED AT AND SHIPPED FROM CHICAGO

GRAIN RECEIPTS (IN THOUSANDS OF BUSHELS)

	By rail	By barge	By lake	Total
Corn	773,897	85,191	23,170	882,258
Wheat	251,419	12,024	18,063	281,506
Oats	210,616	2,470	8,237	221,323
Soybeans	97,500	2,948	120	100,568
Total grain	1,333,432	102,633	49,590	1,485,655

GRAIN SHIPMENTS (IN THOUSANDS OF BUSHELS)

Corn	288,100	200	272,077	560,377
Wheat	158,402	888	83,376	242,666
Oats	177,574	368	17,263	195,205
Soybeans	22,200	.....	17,838	40,038
Total grain	646,276	1,456	390,554	1,038,286

The tariffs and the trade treat soybeans as grain, and as used herein grain includes soybeans. Other kinds of grain are received at Chicago besides that shown in these figures.

The grain received at Chicago by lake inbound comes principally from Duluth, Minn., although during the period covered by the above table substantial quantities of foreign grain were also received via lake at Chicago. The lake shipments from Chicago outbound go primarily to Buffalo, N. Y., for reshipment by rail therefrom to destinations easterly thereof.

(10) All grain of like kind and grade comes to a common market value at Chicago, regardless of the cost, mode or length of inbound transportation. Such grain is sold by the Chicago dealers delivered at Eastern Destinations at the price represented by such Chicago market value, plus the cost of transporting such grain to said Eastern Destinations. The Chicago dealers sell the grain so purchased from the west at delivered prices based on such Eastern Destinations as Philadelphia, Pa., New York City, N. Y., and Boston, Mass. As a consequence, the reshipping rates are borne by the Chicago dealers. Such Chicago dealers are not able to bear or absorb greater outbound reshipping charges on grain brought to Chicago by a particular mode of transportation (such as those prescribed by the Commission in its order herein complained of), than they bear or absorb on grain brought
325 to Chicago by other modes of transportation unless such grain has been purchased by them at a price reflecting a discount of similar amount to the amount by which the reshipping rate on the particular grain is greater than on other grain.

(11) The principal escape of all grain from Chicago to the east is via rail.[5] That is the only escape during a period of five months in the winter when navigation on the Great Lakes is closed. That is also the only escape at any time of year for very substantial volumes of grain sold to processors intermediate between Chicago and Buffalo. In the case of rail-arrived grain, a substantial volume is disposed of by means of local sales at Chicago to processors there located. There is little, if any, sale at Chicago of the barge-arrived grain for local consumption or use, which fact is due to the charges made by railroads for switching the barge-arrived grain from waterfront elevators in Chicago to local grain processors.[6] Grain cannot come to Chicago by barge in substantial volume unless it can find escape to the east.[7]

(12) By far the most important destinations for this grain east of Chicago are in New England and Eastern Trunk-Line territories, which include all territory east of a line drawn northward and southward through Pittsburgh, Pa., and Buffalo, N. Y., north of the Potomac River. For convenience, this territory is collectively referred to herein as "Eastern Territory" and destinations therein are collectively referred to as "Eastern Destinations." While some of this grain initially moves from Chicago to intermediate destinations west of said Buffalo-Pittsburgh line, for convenience called "Central Territory," it is nevertheless sold on the

[5] See footnote 4, supra.

[6] "At Chicago, the elevators are generally served by both rail and water, but local processors there can obtain rail delivery of barge grain only by the payment of a [rail] switching charge ranging from 2.25 to 4.5 cents per 100 pounds." 262 I. C. C. 7, 24.

[7] "Barge-rail grain is marketed but not processed at Chicago." 262 I. C. C. 7, 22.

basis of delivered prices at destinations east thereof because it can be and is sent on from the intermediate destinations under transit to destinations in Eastern Territory, and the whole transportation movement east from Chicago paid for on the basis of the rate applicable to the movement from Chicago to final destination in Eastern Territory.[8] That rate is the only rate east from Chicago which then affects the transaction.

(13) Presently, and for many years, this grain arriving in Chicago by rail, lake, and barge has been transported by the Eastern Railroads in carloads from Chicago to all Eastern Destinations at the same basis of reshipping charges, which basis of
326 charges is illustrated by the charge of 26 cents per hundred pounds from Chicago to New York.[9] These charges are called in the last report of the Interstate Commerce Commission (262 I. C. C. 7) "proportionals or specifics." Whatever they are called, and in whatever form they are published and exacted, they are the charge demanded and received by the Eastern Railroads for their service in transporting east from Chicago grain which has had an antecedent haul by rail, lake steamer, or barge. They have been made without reference to the length of inbound haul by rail, barge, or lake. A descriptive name, (occurring in some rail tariffs) is "reshipping" rates or charges, and they will be so called herein.[10]

[8] "In this proceeding, the rates to trunk-line and New England territories are by far the more important, as marketers and processors in central territory can and do transit under such rates." 262 I. C. C. 7, 15.

[9] Rates are herein stated, as in the rail tariffs and the Commission's report, in cents per hundred pounds.

[10] There is but one level of reshipping rates from Chicago to Eastern Destinations (which are by far the more important here) and it is applicable from Chicago to all Eastern Destinations, whether the grain arrived in Chicago by rail, lake, or barge—and regardless of the origin of the grain west of Chicago. To the less important Central Territory destinations there are three levels of ex-rail reshipping rates dependent on the origin of the grain, each level applying to grain received from a particular origin territory, regardless of the length of the inbound haul. As to grain received from two of such origin territories, the ex-rail and ex-barge reshipping rates east from Chicago are identical. That is to say, there is an identity of rail reshipping charges out of Chicago on grain, regardless of whether it arrived in Chicago by rail, lake, or barge, as to all grain originating in the northwest (Northwest Territory—which includes all origins in North Dakota, South Dakota, Minnesota, Wisconsin, the Upper Peninsula of Michigan, Montana, Wyoming, Idaho, Oregon, Washington, and certain Canadian provinces). To these Central Territory destinations there is also the same identity of rail reshipping charges out of Chicago on grain, regardless of mode of inbound transportation, as to all grain originating west of the Mississippi (Trans-Mississippi Territory, which includes all origins west of the Mississippi other than Northwest Territory). As to grain originating in Illinois, the rail reshipping charges east from Chicago on rail-arrived grain (to Central Territory) differ from the other two reshipping levels just mentioned; but said reshipping level to Central Destinations is not applicable to barge-arrived grain from Illinois. As to such barge-arrived grain, the reshipping rates are the same as the reshipping rates on the ex-lake grain which in turn are the same as the reshipping rates on ex-rail grain from the Northwest. Those rates are in a few cases lower, but as a general level as high (and, to most such Central Territory destinations, higher) than the rail reshipping charges east from Chicago on the grain arriving there by rail from Illinois origins. These three different levels of reshipping charges from Chicago (to Central Territory) are not an adjustment of these outbound rates from Chicago which vary with the length of the inbound haul. Thereunder, grain from Iowa, just across the Mississippi River, takes the same reshipping rate out of Chicago to Central Territory destinations as grain from the Rocky Mountain region; and grain from Milwaukee, Wis., takes the same reshipping rate from Chicago to Central Territory destinations as grain from Canada.

(14) At the same times, the Eastern Railroads have published so-called "local" rates for transporting grain east from Chicago, considerably higher than the reshipping basis, and appli-
327 cable on grain that has had no antecedent transportation to Chicago but originating in the Chicago switching district, called "local" grain. The local rate level is uniformly higher to all Eastern Destinations by 8.5 cents per hundred pounds, than the reshipping rate level. The local rate level is illustrated by the local rate from Chicago to New York of 34.5 cents.[11]

(15) By a previous order, 248 I. C. C. 307 (entered on evidence taken before the Transportation Act of 1940 became effective), the Interstate Commerce Commission approved the Eastern Railroads putting into effect a proposal to cancel the application of the reshipping basis of rail charges as to all grain arrived in Chicago via the inland waterway by barge (called "ex-barge" grain) without changing the reshipping basis of rail charges on grain arrived in Chicago by rail, or by lake (called, respectively, "ex-rail" and "ex-lake" grain), and leaving no rail rate applicable from Chicago to Eastern Destinations on ex-barge grain but the local rates, uniformly higher than the reshipping charges by 8.5 cents to all Eastern Destinations.[12] At the time the evidence was taken on which said order was entered, this transportation of grain to Chicago via barge was not subject to the Interstate Commerce Act and the Commission had held that said Act did not prohibit discrimination in rates and charges by railroads against a connecting unregulated water line, since at that time the said Act did not apply to port-to-port transportation by barge lines, and the prohibited discrimination in rates and charges by railroads against connecting lines embraced only discrimination against a connecting line subject to Part I of the Interstate Commerce Act.[13] That order was contested in this Court and the Supreme Court of the United States, the latter court sustaining the Commission's order. The Eastern Railroads did not avail themselves of the said permission to make their said proposal effective.[14] After said proceedings in this Court and in the Supreme Court of the United States,[14a] the Commission on petition of interested parties reopened

[11] They are also applicable, for example, on grain that has lost its reshipping privilege, as lying too long a time in Chicago without reshipment, and to grain arriving in Chicago via truck.

[12] To destination in Central Territory the local rates exceeded the reshipping rate levels by varying amounts ranging from a few cents to 7.5 cents.

[13] 246 I. C. C. 353, 363, and cases cited.

[14] "Since the Commission refused to approve or prescribe them, they stand only as carrier-made rates, which, under the Commission's decision leaves them open to possible recovery of reparations." Interstate Commerce Commission v. Inland Waterways Corp., 319 U. S. 671.

[14a] The history of the proceedings in which was entered the order sought to be enjoined in this cause may be summarized as follows: The proposal of the Eastern Lines to make the reshipping basis from Chicago to the east inapplicable to ex-barge grain arriving at Chicago over the Illinois Waterways was published in tariffs filed with

the case by order set forth in the margin [15] and on February 13, 1945, entered a further order.[16] Therein and thereby the Commission disapproved and ordered canceled the said rate proposal. No

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the Commission to become effective October 15, 1939. Various shipping inter-
328 ests and Federal filed protests against the proposal alleging that, if made effective, it would violate Sections 1, 2, and 3 (1) of the Interstate Commerce Act. Thereupon, by order of October 14, 1939, said proposal was suspended by the Commission and an investigation instituted into the lawfulness thereof in a proceeding known as Grain Proportionals, Ex-barge to Official Territory, I. & S. Docket No. 4718. Hearings in that investigation were complete in January 1940. On July 31, 1941, the Commission, Division 2, issued its report and order (246 I. C. C. 353) and found that the proposal had not been shown to be unlawful, that the suspension order should be vacated, and the proceeding discontinued as of August 30, 1941. Thereafter, upon petition of the plaintiffs and others, the Commission granted reconsideration (but denied rehearing) (248 I. C. C. 307) in which it stated that the proposed schedules had been shown to be just and reasonable and had not been shown to be otherwise unlawful, that the suspension order should be vacated, and the proceeding discontinued as of December 22, 1941. Thereafter, various parties and interests, including the plaintiffs in this cause and others, as plaintiffs or intervening plaintiffs, filed proceedings in this Court seeking to enjoin the said order of the Commission of December 1, 1941. This Court issued the injunction as prayed. On appeal, the Supreme Court of the United States reversed this Court and held that the order entered by the Commission in the proceeding before it involved no approval of proposed schedules and that the dismissal of the proceedings was within its authority under the circumstances of the case.

[15] The order of the Commission reopening the case before it for further hearing reads:

ORDER

At a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 13th day of July, A. D., 1943

I. & S. No. 4718.

Grain Proportionals, Ex-Barge to Official Territory

It appearing, That in the report of the Commission on reconsideration in the above-entitled proceeding, 248 I. C. C. 307, the Commission said that "in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations."

It further appearing, That motions requesting leave to file petitions for rehearing and for an order fixing specific reshipping rates on ex-barge grain, together with such petitions, have been filed by Cargill, Incorporated; Continental Grain Company, Norris Grain Company; Rosenbaum Brothers; Santa Fe Elevator Corporation; and A. L. Mechling, doing business as A. L. Mechling Barge Line; and that said petitioners request rehearing for the purpose of presenting evidence which will permit the Commission to prescribe and fix reshipping rates on ex-barge grain predicated on the particular circumstances and conditions which surround its transportation;

It further appearing, That the said petitions in effect are complaints which bring in issue the lawfulness of rates applicable on the through movement of the traffic considered in the instant proceeding; and that the record therein may be of assistance in determination of the issues presented by said petitions.

329 And it further appearing, That the said petitions and replies thereto have been considered in the light of the record herein and the opinion of the Supreme Court of the United States in Interstate Commerce Commission, et al. v. Inland Waterways Corporation, et al., decided June 14, 1943.

It is ordered, That this proceeding be, and it is hereby, reopened for further hearing for the purpose of receiving evidence (1) on the questions of whether or not reshipping or proportional rates should be prescribed for interstate transportation by railroad of ex-barge grain, in carloads, from Chicago, Ill., and other related points of origin embraced in the instant proceeding to eastern destinations considered therein, and if so, to determine what would be reasonable and otherwise lawful proportional or reshipping rates for application on such traffic, and (2) to determine what, if any, reasonable and otherwise lawful joint rates for the interstate transportation of grain, in carloads, from points of origin served by said A. L. Mechling, doing business as A. L. Mechling Barge Line, to said eastern destinations, shall be prescribed.

And it is further ordered, That this proceeding be, and it is hereby assigned for further hearing on August 16, 1943, at 9:30 o'clock, a. m., at the Hotel Morrison, Chicago, Ill., before Examiner Fuller.

By the Commission

(SEAL)

W. P. Bartel,
Secretary.

[16] It was stipulated that this order is as reproduced at pages 15 and following of the complaint of A. L. Mechling herein. The "report" (but not the order which makes the said report, and prior reports of July 31 and December 1, 1941, a part of the order) is reported in 262 I. C. C. 7 and following.

one complains of that action. But by the same order the Commission prescribed a maximum basis of reshipping charges on all ex-barge grains from Chicago to destinations lying to the east thereof, that is higher than the basis of reshipping charges to be continued on ex-rail and ex-lake grain.[17] To all Eastern Destinations the prescribed reshipping rates on ex-barge grain are uniformly 3 cents higher than the reshipping basis on all ex-rail and ex-lake grain. To Central Territory destinations, except in a relatively few instances, the prescribed reshipping rates on ex-barge grain are higher than the reshipping basis on ex-rail grain from the same origin, and higher than the reshipping basis on ex-lake grain from all origins.

(16) The Commission found nothing requiring it to order a change in the present equal treatment of ex-rail, ex-lake, and ex-barge grain in respect of the rail reshipping charges to Eastern Destinations. It did not require the Eastern Railroads to put into effect at any particular time the said 3 cent penalty basis of rail charges that it approved against the ex-barge grain in favor of ex-rail and ex-lake grain.[17a] But the Commission found that said penalty rate relation on ex-barge grain was reasonable and otherwise lawful and made such finding and prescribed rate basis a part of its order.[18] By said order the Commission authorizes the East-

[17] The Commission made its findings a part of its order and found (emphasis supplied):

"2. We further find that reasonable and otherwise lawful proportional rates for the interstate transportation by rail of ex-barge grain, in carloads, from Chicago, Ill., to the Eastern destinations considered herein, under sections 1, 2, 3(1), 3(4), 6(11)(b), and 15a(2) of the Interstate Commerce Act, administered with a view to carrying out the national transportation policy, will be those made differentially under the local rail rates which are or may be hereafter concurrently maintained from Chicago, as set forth below, with the customary differentials on the products and export traffic, and which are no less favorable to the ex-barge traffic, and no more favorable to the ex-rail and ex-lake traffic than is represented by the relation between such prescribed ex-barge proportionals, on the one hand, and the present ex-rail and ex-lake proportionals or specifics, on the other.

Where local rail rate on grain is:

(Cents)
13–14
15–22
23–24
25–26
27–28
28.5 and over

Differential, ex-barge under local rail rates shall be:

(Cents)
1
2
3
4
5
5.5"

Said "prescribed ex-barge proportionals" (so prescribed by the Commission in terms of the higher local rates but in relation to the existing ex-rail and ex-lake reshipping charges) are uniformly 3 cents higher from Chicago to Eastern Destinations than what we have called the reshipping charges, which the Commission here calls "the present ex-rail and ex-lake proportionals or specifics," and which are, also, the present ex-barge reshipping rates.

[17a] "As the proposed schedules have not become effective because of the voluntary postponement by respondents of the effective date thereof, no order requiring establishment of the rates herein found lawful appears necessary at this time. An order will be entered requiring the cancelation of the proposed schedules, without prejudice to the filing of new schedules in conformity with the findings herein" (262 I. C. C. 7, 33).

[18] Complaint of Mechling, pages 53, 72.

ern Railroads to make said rate penalty effective, at their option and pleasure. Thereafter the Eastern Railroads on June 2, 1945, filed tariffs putting into effect the said prescribed penalty rate basis on ex-barge grain for the full amount of said 3-cent penalty, to become effective October 5, 1945, which tariffs recite on the face that they are "Issued in conformity with findings of the Interstate Commerce Commission in I. & S. Docket No. 4718 decided February 13, 1945," (which is the said order herein complained of) whereby, pursuant to said order, the reshipping rates from Chicago to Eastern Destinations will be increased by 3 cents on
331. ex-barge grain, while the reshipping charges remain unchanged on ex-rail and ex-lake grain.[19]

(17) Consequences of the Commission's order are as follows:

(a) On grain of like kind (including grain coming from identical shipping points west of Chicago that originate both ex-barge and ex-rail grain, and receiving the same terminal and transit service at and east of Chicago available to all ex-rail, ex-lake and ex-barge grain under the tariffs of the Eastern Railroads) said prescribed higher charge will be made for transporting the same from Chicago to Eastern Destinations if such grain arrived in Chicago by barge, but only the lower established reshipping charge will be made if it arrived in Chicago from the same origin by rail.

(b) On grain of any kind coming by rail or lake from any origin, the same established reshipping charge will be made for transporting the same from Chicago to Eastern Destinations, regardless of whether it is ex-lake from Duluth, or ex-rail from within a few miles of Chicago, and regardless of any other factual disparity between such ex-rail and ex-lake grain.

(c) All ex rail grain, wherever it comes from, and however short the inbound haul, will be transported to Eastern Destinations for three cents less than any ex-barge grain whatever.[20]

(18) The increase so prescribed in the reshipping charges on ex-barge grain relative to the reshipping charges east from Chicago on ex-rail and ex-lake grain would substantially lessen the barge-rail traffic via Chicago, and substantially decrease the volume of grain moving by barge to Chicago. The pertinent facts are as follows:

(a) Shippers of grain to Chicago from origins served by both rail and barge transportation to Chicago will have less incentive to ship grain to Chicago by barge, because when it comes to Chicago by barge, the reshipment cost east from Chicago to the same destination will be more than if it came to Chicago by rail.

[19] To destinations in Central Territory the changes in ex-barge rates shown in said tariffs vary in amount. They need not be stated in detail since the difference between the change in the rate basis to Central Territory and the change to Eastern Territory is one of degree only.

[20] Similar disadvantages in varying amounts is imposed on ex-barge grain to destinations in Central Territory.

(b) The net price to the Illinois farmer selling his grain for transportation by barge to the Chicago market is determined by the Chicago price, less the barge rate and the applicable costs and margins peculiar to the barge traffic.[21] One such cost deducted from the Chicago market price in order to arrive at the farmer's net price, is the cost of trucking the grain to the river. The Commission finds: "Where the deductions [from the Chicago price] are less on the barge than on the rail traffic the net price
332 to the farmer is correspondingly greater, the difference diminishing as distance from the waterway increases until it disappears altogether." (262 I. C. C. 7, 23) The diminishing difference is due to the increase in the cost of getting the grain to the river as distance from the river increases.[22]

Such rate differences, however, do not measure the commercial saving from barge transportation as against rail transportation.

As to rail-arrived grain the Commission finds:

"The net price to the farmer on grain shipped to the Chicago market [by rail] is usually determined by deducting the in-bound truck cost, rail rate, and the country elevator margin from the Chicago price" (262 I. C. C. 7, 16).

"So far as the rail carriers are concerned the grain originates at numerous so-called country grain elevators located throughout the origin territory requiring an in-bound truck haul from the farms ranging from only a few yards to about 10 miles, with a truck charge or cost ranging from 0.9 to 1.8 cents. The all-rail traffic requires only one intermediary between the farmer and the dealer at the primary market or gateway, namely, the country elevator operator, whose average margin is about 4.7 cents" (I. C. C. 7, 16).

[21] The Commission correctly so finds. 262 I. C. C. 7, 22-23.

[22] The Commission's report (262 I. C. C. 7, 39-40, Tables IV and V in Appendix A) shows the rates via rail and via barge from some barge origins to Chicago, from which may be computed the differences in such inbound rates as follows:

Origin	Inbound rates		Difference
	Via rail	Via barge	
Illinois:			
Morris	9.5	2.0	7.5
Seneca	9.5	2.25	7.25
Ottawa	10.0	2.5	7.5
La Salle	12.0	2.75	9.25
Henry	12.0	3.5	8.5
Lacon	12.0	3.5	8.5
Chillicothe	12.0	3.5	8.5
Peoria:	12.0	4.0	8.0
Havana	12.0	4.25	7.75
Naples	13.0	5.0	8.0
Missouri:			
Kansas City	16.0	9.3	6.7

As to barge arrived grain, the Commission finds:

"The net price to the Illinois farmer selling his grain for transportation by barge to the Chicago market is determined by the Chicago price, less the barge rate and the applicable costs and margins peculiar to the barge traffic" (262 I. C. C. 7, 23).

The trucking cost on the great preponderance of barge-grain traffic to the river ranges from 0.9 cent to 5.4 cents depending upon trucking distance (262 I. C. C. 7, 42).

"A trimming expense of 0.7 cent per 100 pounds is incurred in connection with the barge-rail grain. * * * The margin for these elevators at the Illinois barge origins averages about 2.68 cents. * * * Although the barge-grain from the Illinois origins does not move through the country rail elevators, it is generally purchased through the operators thereof, who are allowed the same margin as on the rail grain, namely, 4.4 cents" (262 I. C. C. 7, 22–23).

333 The elevator charges and dealer's margin at Chicago are the same as on transit rail grain, namely, 1.6 and 2.25 cents, respectively" (262 I. C. C. 7, 23).

These items make the commercial saving resulting from the use of barge transportation rather than rail transportation less than the difference between inbound barge and rail rates which are stated above in this note.

"Where the deductions are less on the barge than on the rail traffic, the net price to the farmer is correspondingly greater, the difference diminishing as distance from the Waterway increases until finally it disappears altogether" (262 I. C. C. 7, 23).

It finds further: "The primary interest of the Illinois farmer, having access to the Waterway is in the greater net price above referred to. The barge lines and the Waterway elevator operators and dealers are primarily concerned with the volume of traffic moving through their facilities." [23]

The farmers are also interested in their cooperative elevator facilities on the rivers, which will be depreciated by decreased volume of barge traffic. (c) The Chicago grain dealer must absorb, or pass on to his eastern customer, the cost of transporting the grain east from Chicago; such transportation cost will be higher by 3 cents a hundred pounds to all-Eastern Destinations when the grain is transported east by rail; aside from abnormalities arising from wartime conditions, which have occasionally created the sellers' market referred to by the Commission, under the Commission's prescribed penalty rate thereon ex-barge grain in the hands of a dealer on the Chicago market will be worth 3 cents less for

[23] 262 I. C. C. 7, 24.

reshipment by rail to Eastern Destinations than ex-rail or ex-lake grain.

(d) The Commission found, as to discount in prices paid for barge-arrived grain on the Chicago market resulting from the reshipping rates thereon prescribed by it, that there is "no reason" why such discount should be as great as the rate increases resulting from such prescribed rates. Assuming that finding of the Commission were supported by the record, viz, that such discount of ex-barge grain were 2½ cents, or 2 cents, it affords no rational basis for the imposition of said 3 cent rate penalty on all ex-barge grain from Chicago to Eastern Destinations. Insofar as said finding of the Commission refers to grain for reshipment under normal conditions by rail to destinations east of Chicago there is compelling reason (as is also disclosed by the findings in the reports of the Commission that price parity on ex-rail, ex-barge and ex-lake grain is due to reshipping rate parity[23a]) why such discount on ex-barge grain should at least closely approximate said prescribed increases in the reshipping rates thereon, and no substantial reason to doubt that result. Ex-barge grain will be discointed on the Chicago market, as a result of said penalty rates on ex-barge grain.

334 (e) Succinctly restated, the discount in the Chicago price on ex-barge grain resulting from the increased rail charge for moving it east, will decrease the net price to the farmer who brings his grain to the river, which shrinks the farm area adjacent to the river deriving any benefit from the low barge rates to Chicago, diminishes the advantage in the narrowed area still deriving any advantage from the low barge rates, and correspondingly shrinks the barge tonnage into Chicago.

(f) Some grain can and does find escape from Chicago to the east over the Great Lakes.[24] The lake escape for grain from Chicago is not available at all during about five months of every year, when lake navigation is closed by weather and ice conditions on the lakes, and especially the freezing of the Straits of Mackinac through which grain via lake from Chicago must pass. There are annually peak movements of grain to Chicago from origins served by barge at times of year when lake navigation is closed. A large part of the grain moving east from Chicago by rail is for transit intermediate to Buffalo, N. Y., at points that cannot get such service by lake.[25]

(g) When grain inbound by barge is not merchandized at Chicago, but is shipped via barge-rail routes through Chicago for the account of a processor to the east thereof (as for example, wheat

[23a] 262 I. C. C. 7, 17, 18, 21.
[24] See finding number 8.
[25] See finding number 12.

from Kansas City to the Montana Flour Mills at Cleveland, Ohio), there is an initial saving in the inbound rates by barge of 6.5 cents (16 less 9.5), which same difference would be reflected at ultimate Eastern Destination if ex-barge grain is continued on a reshipping rate level parity with ex-rail grain from Kansas City. Presently, that saving is harrowed by an additional expense of 3.25 cents at Chicago for trimming, weighing, elevation and inspection of the barge-arrived grain (262 I. C. C. 7, 23, 24) similar items not being encountered in connection with direct shipments of all-rail grain. Additionally, if the barge shipments from Kansas City came from an elevator thereat, other than the one elevator located on the river bank, additional switching charges and a transfer charge from car to barge must be paid. (262 I. C. C. 7, 23, 24.) These latter charges are the equivalent of 2.64 cents per hundred pounds on a 100,000 pound car. When a 3-cent penalty is imposed in connection with the ex-barge reshipping rate, the sum of that penalty plus 3.25 plus 2.64 equal 8.89 cents, which exceeds by 2.39 cents the inbound rate saving from the use of barge service, so as to make the use of barge-rail service commercially impossible under the ex-barge reshipping basis prescribed by the Commission.

335 (19) The volume of barge grain traffic to Chicago will be substantially curtailed by the said penalty rate basis prescribed on ex-barge grain. Hitherto, the Commission finds: "The proportionals from Chicago on the ex-barge grain being substantially [sic] the same as on ex-rail and ex-lake grain, the Chicago dealers are able to maintain the Chicago price without discount on grain backed by barge billing and to utilize such grain in their hedging operations." (262 I. C. C. 7, 23.) "Backed by barge billing" refers to the fact that in order to secure the application of the outbound rail proportionals, inbound billing for a like amount and kind of grain must be surrendered to the Inspection Bureau at Chicago. The "proportionals" (reshipping charges) from Chicago on the ex-barge grain are not substantially the same, but exactly the same, as on ex-rail and ex-lake grain, to all Eastern Destinations. The Commission finds: "Under the proportionals approved herein on the ex-barge traffic it may be necessary to accord grain backed by barge billing some discount under the Chicago price, * * *" (262 I. C. C. 7, 29) (going on "but certainly there is no reason why such discount should be as great as the increases resulting from such proportionals," as to which see finding 18 (d) herein).

(20) The said proposal of the Eastern Railroads to increase the reshipping charges on ex-barge grain from Chicago east (relative to such charges on ex-rail grain was made with the avowed purpose of driving inbound barge grain traffic, on the barge-rail route via

Chicago, off the water and onto the rails;[25a] the Commission now correctly finds that it would have that effect.[25b] By said order the Commission prescribes an increase in the reshipping charges
336 on ex-barge grain from Chicago east (relative to such charges on ex-rail grain) which differs only in degree from the said proposal of the Eastern Railroads, and would divert barge-rail traffic from the lines of plaintiff barge lines to the competing lines of the Western Railroads that bring grain to Chicago from the same western origins.

(21) The inbound barge rates on grain to Chicago represent an adjustment predicated on the volume of such inbound barge traffic. Decrease of such inbound barge traffic volume would require an increase in the barge rates. The volume of such barge traffic varies inversely with the barge rates. A change of a quarter of a cent in the barge rates affects the volume of such barge traffic. Decrease of the volume of such barge traffic does not proportionately decrease the costs of the barge movement of such traffic by the barge lines.

(22) The Commission finds:

The present combinations on the barge-rail traffic, being so much lower than the all-rail rates from the same and other origins, have diverted and will continue to divert a substantial portion of the traffic to barge-rail routes via Chicago from the all-rail routes, including those through Indianapolis and other markets. This is due, in part, to the level of the barge rates. However, it is also partly due to the level of the present ex-barge proportionals.[26]

The fact that the barge-rail combinations from any origin via Chicago to Eastern Destinations are lower than the all-rail charges and combinations on such traffic, is solely due to the level of the inbound barge rates to Chicago; for the amount of outbound rail reshipping charges to all Eastern Destinations is precisely the same on the all-rail and barge-rail traffic. To the less-important Central Territory destinations, the fact that the barge-rail combinations via Chicago are lower than the all-rail rates, is also due to the level of the inbound barge rates; to all Central Territory destinations the amount of the outbound rail charges is precisely the same on all-rail and barge-rail traffic on grain originating in Trans-Mississippi and Northwest territory, and on the whole as high (and usually higher) on the barge-rail traffic on grain originating in Illinois. The statement that the condition above described by the Commission "is partly due to the level of the present ex-barge proportionals" is supported by the record in the sense that the advantage of lower inbound barge rates on

[25a] See finding 26 post, footnote 32.
[25b] 262 I. C. C. 7, 25.
[26] 262 I. C. C. 7, 29.

barge grain is not extinguished by higher outbound rail charges on that grain, under the equal reshipping charges on ex-barge, ex-rail, and ex-lake grain hitherto in effect. But it affords no rational support for the Commission's order.

(23) The inbound barge rates to Chicago are reasonable, and compensatory to the barge lines.[27] The difference between the barge-rail and all-rail combination rates via Chicago to Eastern Destinations, reflects and preserves the inherent low-cost advantage of water transportation on the barge-rail routes. This is equitable.

337 (24) The Commission does not find how the inherent low-cost advantage of barge transportation to Chicago would be preserved under its order prescribing said penalty charge on rail transportation of ex-barge grain out of Chicago. Assuming, as the Commission states, that "If the rates on the ex-barge traffic are adjusted 'in view of its particular circumstances and under the provisions of the Act designed with reference thereto,' the barge-rail traffic will have a fair opportunity to move in competition with the lake-rail and all-rail traffic, thus preserving the inherent advantage of barge transportation to the adjacent farm community and all others concerned, without any adverse effect on the wartime stabilization program or the effective use of the waterway" (262 I. C. C., 29) that general hypothetical statement does not constitute a finding of fact that any particular rates (such as those prescribed by the Commission's said order) either will have the effects stated, or are in compliance with the requirements of the Interstate Commerce Act, as amended. Furthermore, so regarded, said statement would conflict with specific facts found by the Commission, a conflict not resolved by any finding of the Commission. (Moreover, if so regarded said statement would lack substantial support in the record.)

(25) The Commission found:

To trunk-line and New England territories, the ex-barge proportionals are the same as the uniform ex-rail proportionals or specifics. To central territory, the ex-barge rates from the Illinois origins are the same as the northwest proportionals, and from Kansas City the same as the trans-Mississippi proportionals. The barge-rail combinations are not made subject to the above-quoted fourth-section rule and from Illinois are generally far below the local rates from Chicago and also lower than the local rates from numerous intermediate origins in central territory, con-

[27] The Commission correctly so found. (262 I. C. C. 7, 19): "The barge rates yield fair returns to the barge carriers, and, for the purpose of this proceeding, may be accepted as reasonable."

stituting numerous and extreme departures from the long- and-short haul provision of section 4 of the Interstate Commerce Act. For example, from Morris, they are lower than the local rates on domestic grain to trunk-line and New England territories from all central territory origins west of a line running south from Amadore, Mich., through Oxford, Mich., just west of Hudson, Mich., then east of the Ohio-Indiana State line south to a point just west of Cincinnati, Ohio. They are also lower than the local rates on export grain from all central territory origins west of a line from Erie, Pa., south through Meadville, thence via Johnsonburg, to Altoona, Pa. The barge-rail rates are far below the all-rail rates from the same and other Illinois origins. This is an inequitable situation giving rise to requests for reductions in the all-rail rates from the Illinois and central territory origins, and it is difficult to see, with such extreme disparities, how such requests could properly be denied. As shown by appendix B, table I, there is a substantial production of corn in central territory. While the farmers therein did not appear at the hearing to show that they were hurt by this situation, such evidence was adduced by others in the same relative position, namely, the associations of private and farmer cooperative elevator companies at numerous rail origins in Illinois. This is what is meant by the statement in the prior report[25] that the present ex-barge proportionals from Chicago jeopardize the all-rail rate structure.

The bare arithmetical rate computations above stated by the Commission are assumed to be correct; it is also true that:

(a) As to grain produced at intermediate locations between Chicago and destinations to the east, the farm producers, marketers and shippers of such grain and products thereof (who are herein collectively called "intermediate shippers"), insofar as they may compete with grain or products thereof moving through Chicago in supplying demands to the east of them, are unaffected in that competition by the transportation or other costs of moving grain to Chicago. The commercial effect of differences in cost, including transportation cost, of getting grain to Chicago, is exhausted when the grain arrives at Chicago, where it takes the Chicago market price. The price with which any intermediate shippers are in such competition is the delivered price at eastern destination—viz, the Chicago market price plus the reshipping rate east from Chicago. Under the Commission's order, barge-rail grain would be subjected to a higher reshipping rate east from Chicago, and would be correspondingly discounted on the Chicago market to put its delivered price at the eastern destination on a competitive parity with all-rail and lake-rail grain (if, after the

[25] 262 I. C. C. 7, 20.

ex-barge rates prescribed by the Commission became effective, there were any barge-rail grain on the Chicago market at all). The Commission's order would not affect the Chicago market price, nor the reshipping rate east from Chicago, on all-rail and lake-rail grain. The competitive situation of any intermediate shipper as to grain moving via Chicago would not be affected by the Commission's order.

(b) Low-cost water transportation by barge to Chicago, enabling producers of grain west of Chicago to realize a higher price on their grain when it moves by barge to Chicago, gives marketers at Chicago an economic advantage in the accumulation of grain produced west of Chicago over marketers at locations [29] who deal in grain moving all-rail from origins west of Chicago to Eastern Destinations; which economic advantage is due to the fact that there is low-cost water transportation by barge to Chicago and is a natural economic advantage from geographic location, which cannot be conferred on marketers or dealers or elevator operators (wherever located) who are dependent on all-rail routes. This natural economic advantage can, however, be wholly or partly destroyed; as, by increasing the cost of out-bound rail transportation east from Chicago on grain that has enjoyed the low barge rates into Chicago, thereby decreasing the price advantage realized by the farm producer west of Chicago from the use of barge transportation to Chicago, and enabling marketers dependent on all-rail transportation to accumulate more grain produced west of Chicago for all-rail transportation, to the disadvantage of the producers and the barge lines.

339 (c) Grain marketers, dealers and elevator operators (interested in accumulating grain) who are dependent on all-rail routes are not in the same relative position as farmers (interested in selling grain) who are dependent on all-rail routes. The fact that some farmers are so located as to have accessible low cost barge transportation and receive, for that reason, a higher price for their grain, does not decrease the price received by farm producers not so located, and dependent on all-rail transportation. Grain marketers, dealers and elevator operators so situated as to have accessible low cost barge-rail transportation have an economic advantage in that they are able to pay a higher price per bushel, and thus accumulate more grain, than those marketers, dealers and elevator operators who are dependent on higher cost all-rail transportation. That advantage of grain marketers, dealers and elevator operators so situated as to have accessible low cost barge-rail transportation is a natural economic advantage, which cannot be equalized with, or conferred on, others not so situated;

[29] Including intermediate locations, such as Indianapolis.

but which can be destroyed, as, by increasing the outbound rail charges on grain that has enjoyed low inbound barge rates.

(d) The Commission's finding that the situation is inequitable as between all-rail shippers, including "intermediate shippers," on the one hand, and barge-rail shippers on the other hand, is unsupported by the record. It is equitable that the low-cost advantage of water transportation on this barge-rail route should be preserved, and reflected at every destination on the barge-rail route. It is not preserved by increasing the transportation charges on the outbound rail leg of the barge-rail route because the inbound barge rates are low.

(e) All that is said by the Commission in its finding quoted in the first paragraph of this Finding of Fact relates to rate equities as between shippers and does not relate to rate equities as between connecting lines. That finding provides no rational support for the Commission's order as directed to the issue under Section 3 (4) of the Interstate Commerce Act.

(f) The present equality of reshipping rates from Chicago on ex-barge, ex-rail, and ex-lake grain to Eastern Destinations has been part of the grain rate structure for more than a decade.

(g) About $60,000,000 of public funds have been expended by the State of Illinois and the Federal Government in the improvement of the Illinois Waterway, which is the water link connecting Chicago with the inland river system of the continent.[29]

340 (h) The above-quoted comparison made by the Commission of a combination of water rates and rail reshipping rates, with local rail rates, is a comparison of unlike entities.[30] At no point on the barge-rail route is there a lower barge-rail combination rate for a shorter than for a longer haul.

(i) The Commission's finding that said situation involves departures from Section 4 of the Interstate Commerce Act does not support its order, in view of the Commission's conclusion that neither the so-called fourth-section rule in the tariffs of the eastern railroads, nor the long-and-short haul clause of Section 4 of the Interstate Commerce Act does, or should, govern this

[29] *"History of the Illinois Waterways."*—During the period from 1848 to 1908, what was then called the Illinois & Michigan Canal was open to the transportation of grain and other commodities into Chicago. In 1908 the State of Illinois authorized a $25,500,000 bond issue for the improvement of the Illinois Waterways, including a portion of the Illinois River. In 1930 the Federal Government took over the project, and the Waterways were again opened for navigation into Chicago in 1933. Exclusive of the expenditures on the old Illinois & Michigan Canal, it is estimated that the total cost of improvements of the Illinois Waterways for navigation purposes has been $60,000,000. No lock charges are made on the Illinois Waterways. Upon the reopening of these waterways certain individuals, grain merchants, and elevator companies, "invested large sums in elevator facilities along its course." (246 I. C. C. 353, 354–55.)

[30] The local rail rate from Fort Wayne, Indiana, to New York is 30 cents. The transit balance of the reshipping rail rate from Fort Wayne to New York (the difference between the reshipping rates from Chicago to New York and to Fort Wayne) is 11½ cents. Fort Wayne has no water rates and no reshipping rates.

barge-rail adjustment, the Commission's finding in respect to this being quoted in the margin: [31]

(26) The proposal to charge a higher rate on ex-barge than on ex-rail or ex-lake grain did not originate with the Commission or with shippers. It was originated by the railroads, for the purpose of driving the inbound traffic to Chicago off the water and onto the rails.[32] It did not include a proposal to increase the ex-lake rates because it was felt that the application to ex-lake grain of the existing reshipping or proportional rates at Chicago did not take any business away from the Western Railroads.[33]

341. The witness for the Eastern Railroads made no claim at any time that any greater service was rendered or any greater cost incurred in the handling of ex-barge grain at or beyond Chicago than in the handling of ex-rail and ex-lake grain at or beyond Chicago so as to explain, excuse, or justify a higher reshipping rate level on ex-barge than on ex-rail and ex-lake grain

(27) Findings on which the Commission purported to base its conclusion that higher rates on ex-barge grain than on ex-rail and ex-lake grain would not be discriminatory as between connecting carriers read as follows (262 I. C. C. 7, 27–28):

"Where, as here, ex-rail and ex-lake proportionals or specifics reflect average circumstances and conditions surrounding the all-rail and lake-rail transportation which differ from those affecting the barge-rail transportation, we conclude that ex-barge proportionals may properly vary from the ex-rail and ex-lake proportionals or specifics to the extent warranted by such differences.

"The principal differences as shown by this record and described above may be summarized as follows:

1. On the average, as compared with the ex-barge grain, the movement under the ex-rail proportionals and specifics requires less terminal service at the gateway or junction, less transit serv-

[31] "Under section 6 (b) [3] of the Transportation Act of 1940, respondents are not required to increase their present ex-barge proportionals to bring the barge-rail combinations in harmony with fourth-section principles. But this section cannot be construed as precluding respondents from increasing those proportionals to bring the barge-rail combinations more nearly into conformity with section 4. Since section 6 (b) of the Transportation Act of 1940 protects the departures in the present adjustment it follows that it will protect any departures of lesser extent, such as those resulting from the rates approved herein" (262 I. C. C. 7, 30–31).

[3] This section appears on page 24 of our compilation of the Interstate Commerce Act and related sections of other acts, revised to April 1, 1941, and at 54 Stat. L. 904. The provision of that section referred to reads as follows:

"In the case of a carrier heretofore subject to the provisions of paragraph (4) of section 4 of the Interstate Commerce Act, as amended, no rate, fare, or charge lawfully in effect at the time of the enactment of this Act shall be required to be changed by reason of the amendments made to such paragraph by subsection (a) of this section."

[32] The Eastern Railroads offered only one witness at the hearings who testified at page 90 of the transcript of the testimony taken by the Commission: "We made this proposal, as I have stated several times, and filed these tariffs with the hope that we could drive the business off the water and back on the rails where it belongs" (248 I. C. C. 307, 321).

[33] Testimony of witness Tannehill for the Eastern Railroads at page 3660 of the transcript of the testimony taken by the Commission.

ice at intermediate points in official territory and less line-haul service to the southern portion of central territory.

2. The in-bound rail hauls of all the traffic which engages the ex-rail proportionals are substantially longer, on the average, than the in-bound barge hauls.

3. The rate-making circumstances characteristic of the all-rail traffic, but not of the barge-rail traffic here considered, include:

(a) The ex-rail proportionals or specifics, as parts of the through all-rail rates, provide to each destination on all-rail traffic from west of the gateways an average out-bound factor which is a component part of many through rates of different amounts, which vary with the length of the in-bound hauls and the western factors applicable thereto.

(b) The ex-rail proportionals or specifics (1) are made subject to a fourth-section rule which in effect provides that to trunk-line and New England territories they shall apply only where the in-bound rate is 8.5 cents or higher, and (2) to all official territory destinations are adjusted to equalize the all-rail rates by the various routes and gateways.

(c) The ex-rail proportionals or specifics, combined with the in-bound interstate rates or specifics, result in through all-rail rates to official territory which harmonize with each other and with the local rates in that territory.

4. Lake grain from the Northwest consists chiefly of wheat which has a relatively long water haul in-bound and is usually preceded by an in-bound rail haul. The rail-lake-rail combinations, in general, conform to the principles which underlie section 4. In these respects, lake grain is like barge grain from Kansas City but unlike barge grain from Illinois. To trunk-line and New England territories the lake-rail grain differs from all of the barge-rail grain moving through Chicago in that the lake-rail grain can and generally does bypass that gateway entirely." 342

We find:

The findings of the Commission do not disclose any rational relation between such differences, if any, and the difference in reshipping rate prescribed on ex-barge grain as compared with the established reshipping charges, that remain applicable on ex-rail and ex-lake grain and that have hitherto been applicable on ex-barge grain. Nor does the record before the Commission disclose any such relation.

(28) As to the Commission's said finding that "on the average" there were differences as found by the Commission in paragraph

"1" above quoted, between ex-barge and ex-rail grain,[34] we find that:

(a) Such differences also exist between ex-rail and ex-
343 lake grain.[35] Under the Commission's order the same re-
shipping rate east from Chicago would prevail on ex-rail and ex-lake grain and a higher reshipping rate on ex-barge grain only. Ex-barge and ex-lake grain via Chicago are in competition to supply eastern demands.

(b) The application by the Eastern Railroads of the present reshipping charges on ex-rail (or ex-lake) grain is not, and, under the Commission's order would not be, contingent upon the amount of terminal or transit service such ex-rail (or ex-lake) grain does or does not receive. Under the tariffs and the order, that portion of the ex-rail (and ex-lake) grain traffic which receives the identical transit and terminal services at Chicago and at transit points east thereof as is received by ex-barge grain will move on the present and lower reshipping rate level.

(c) Assuming the record showed any substantial difference, or any difference whatever, in the costs and services of the Eastern Railroads in handling (a) grain products or grain moving in continuous service through Chicago, on the one hand, and (b) whole grain receiving a transit service and transfer of lading at Chicago, on the other hand, the "averaging" of all ex-rail grain falling in both categories for the purposes of the report and order is the equivalent of according grain falling in the first category a higher reshipping rate level, costs and services considered, and ex-rail grain in the second category a lower reshipping rate level, costs and services considered, than is to be continued with the

[34] The Commission elsewhere finds: "The western factors of the through rail rates include not to exceed three transit services without additional charge, and to the extent that the all-rail shipments receive transit on the in-bound movements to the gateways there is less demand on the eastern carriers to perform transit service thereon. This record shows that there is a very substantial volume of domestic grain and grain products moving from points west of the gateways to the East without transit at the gateways or points east thereof. That such through movements by rail are substantial is shown by the statistics set forth in appendix B hereto coupled with the fact that official territory consumes as grain or products about 156,000,000 more bushels annually than it produces. Moreover, all-rail grain may be, and frequently is, marketed and processed at Chicago under one transit operation, which avoids the necessity for processing at an intermediate point east thereof. Transit is not available under the in-bound barge rates. Barge-rail grain is marketed but not processed at Chicago. To be processed before final destination it must be transited at some point beyond Chicago. It follows that respondents are called upon to perform more transit service, on the average, on the ex-barge than on the ex-rail traffic" (262 I. C. C. 7, 22).

Grain processed in transit at Chicago, or west of Chicago, comes to the hands of the eastern railroads as grain products and takes a different rate than the reshipping rate on whole grain. "From the gateways to trunk-line and New England territories grain products take 0.5 cent over grain. * * *" (262 I. C. C. 7, 14).

The eastern railroads bear no costs of elevation.

[35] The Commission finds: "Unlike the all-rail traffic, the lake-rail traffic following the water courses moves only over circuitous routes, requires transfer of lading, and requires a full origin and terminal service when it leaves the interchange port. In other words, it never moves in continuous through transportation" (262 I. C. C. 7, 18-19).

approval of the Commission on all ex-rail grain: and is the equivalent of according ex-rail grain in the second category a lower reshipping rate level than would be required thereon by the rate-making principle followed by the Commission in prescribing a reshipping rate level on ex-barge grain.[36] The ex-rail grain in the second category (grain receiving a transit service in connection with temporary storage at Chicago) far exceeds in volume the total volume of ex-barge grain. The so-called "averaging" of all ex-rail grain falling in both categories bears no rational relation to the uniform 3-cent penalty prescribed in the reshipping rate level on ex-barge grain from Chicago to Eastern destinations.

(d) Ex-rail and ex-barge grain moving through Chicago receives exactly the same line-haul service to the southern part of Central Territory. If it were otherwise, such difference of rail service from Chicago to the southern part of Central Terri-
344 tory would have no rational relation to the 3-cent reshipping rate penalty prescribed on ex-barge grain from Chicago to Eastern destinations.

(e) Under the tariffs and the order, the portion of the all-rail grain traffic which moves via Chicago and over the same circuitous routes to the southern portion of Central Territory as ex-barge grain will move on the present reshipping rate level lower than is prescribed for ex-barge grain.

(f) There is no finding which specifies the extent of the differences found to exist in general terms in paragraphs 1 and 2 above quoted and there is no evidence tending to show the extent of such differences, if any.

(g) The Eastern Railroads obtain the same charges and revenues on ex-rail, ex-lake and ex-barge grain.

(h) There is no finding (and no evidence) that the Eastern Railroads sustain any substantial differences of cost in their service east from Chicago on ex-rail, ex-lake, and ex-barge grain moving to the same destinations.[37]

In its report of December 1, 1941, the Commission found (248 I. C. C. 307, 311) "* * * in each instance [ex-barge, ex-rail, and ex-lake reshipments] the physical carriage beyond the reshipping point is substantially the same." In its report of February 13, 1945, the Commission found (262 I. C. C. 7, 8 emphasis supplied) "Ex-barge, ex-lake and also ex-rail traffic except as herein-

[36] The tremendous volume of grain shipped out-bound from Chicago to the east, only a small portion of which can be ex-barge grain since barge-arrived grain constitutes a small fraction of all in-bound grain received at Chicago, is shown in Finding No. 8.

[37] The subject is mentioned, however, in the dissenting opinion of Commissioners Alldredge and Lee: "The eastern railroads have not shown a need for additional revenue or established the existence of any higher costs of consequence, terminal or otherwise, in the transportation of ex-river traffic than those incurred in the handling of ex-rail or ex-lake traffic of the same character" (262 I. C. C. 7, 35).

after indicated, are all accorded the same outbound service, * * *.". The matters "hereinafter indicated" are described in the finding of the Commission first quoted in Finding of Fact number 27 and do not constitute substantial differences in outbound service in respect to ex-barge grain, on the one hand, as compared with ex-lake grain, on the other, or as compared with ex-rail grain from the same origin which receives, as is provided by the tariffs, at and east of Chicago the same transit and terminal services and the same line-haul service as is received by ex-barge grain.

(i) Assuming that substantial quantities of ex-rail grain are processed in transit west of and at Chicago and move east of Chicago as grain products without receiving additional transit services, whereas, all ex-barge grain is processed in transit at points east of Chicago, so that the latter grain receives on the average more transit services east of Chicago when moving on the rates in issue than does the average of all all-rail grain and grain products, it further appears that any transit service received for processing purposes east of Chicago pays a 0.5-cent charge
345 therefor in addition to the reshipping rate.[37a] By reason of this fact, the difference in the average transit service east of Chicago on ex-barge as compared with ex-rail grain is not a difference in circumstances related to the reshipping rates for line-haul service in issue in this cause.

(j) Furthermore, if it were otherwise, and if it be a fact that a substantial volume of grain or grain products moves via all-rail routes from points west of "the gateways" to the East without transit at "the gateways" or points east thereof, the evidence referred to by the Commission in its finding quoted in footnote No. 34 above does not show how much (if any) thereof moves via Chicago, or any rational relation with the penalty imposed on the reshipping rate on ex-barge grain from Chicago to the East.

(29) With respect to the finding of the Commission in said paragraph "2" above quoted that the inbound rail hauls of all of the traffic which engages the ex-rail proportionals are substantially longer "on the average," than the inbound barge hauls, we further find:

(a) Under the Commission's order ex-barge grain and ex-rail grain of like kind coming from an identical origin west of Chicago will always take different reshipping rates from Chicago depending on whether the inbound haul was by barge or rail, the higher rail reshipping charge being assessed on ex-barge grain

[37a] Witness Scott, in describing the total transportation charges on grain from Kansas City to New York City moving via barge to Chicago, thence via rail to Cleveland or Fostoria, Ohio, for processing under transit, and thence as grain products to New York City, stated that such aggregate included 0.5 cents for transfer (transit) at the Ohio processing point (pp. 3549-3550 of transcript of hearings before the Commission).

from such identical-origin to all Eastern Territory (and most Central territory) destinations.[38]

(b) The barge lines and the Western Railroads are in competition for the inbound haul only from origins accessible to inland river transportation. The inbound "rail" hauls of "all of the traffic" engaging the reshipping rates include inbound rail hauls from origins not accessible to barge transportation, whose length, when included in such average, renders it irrelevant to and without rational bearing upon said competitive traffic between the barge lines and the Western Railroads, and without rational bearing upon the non-discriminatory relation that should prevail under the Interstate Commerce Act, as amended by the Transportation Act of 1940, with respect to the rail reshipping rates and charges east from Chicago on the traffic of the barge lines and the Western Railroads from identical, water-competitive origins.

(c) The reshipping charges, referred to in said finding of the Commission as "the ex-rail proportionals" are, and for many years have been, also the ex-barge reshipping rates or proportionals.

(d) "To Trunk-line and New England territories the proportionals from Chicago and the other gateways are uniform, regardless of origin"[39] (262 I. C. C. 7, 12) and would so
346 continue as to ex-rail and ex-lake grain under the Commission's order.

(30) The alleged difference in rate-making circumstances found in paragraph "3 (a)" above quoted is not truly such, since the ex-barge rates likewise are a component of the many through rates of different amounts, which through rates vary with the lengths of the inbound hauls and the western factors applicable thereto, whether said ex-barge rates are made the same or higher than the ex-rail and ex-lake rates.

(31) As to the difference found by the Commission to exist between all-rail and barge-rail transportation in paragraph numbered "3 (b) (2)" above quoted,[40] that the "ex-rail" reshipping charges from Chicago to all destinations to the east thereof "are" adjusted to equalize the "all-rail" rates by the various routes and gateways,[41] the Commission's further finding is:

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[38] Here, and before the Commission, the plaintiffs complain of this (among other things) as discrimination between connecting lines.

[39] Reshipping charges on grain east out of Chicago to eastern destinations have been uniform irrespective of origin since February 1, 1910 (262 I. C. C. 7, 12, 14).

[40] As to paragraph "3 (b) (1)" above quoted, see findings numbered 25 (e), (g) and (h) hereinabove made.

[41] Combination through rate factors on grain from trans-Mississippi and northwest territories to and from St. Louis and Peoria produce the same total through rates as to and from Chicago. This result is produced by an adjustment of inbound and outbound rates by rail which vary inversely. Such result is termed "gateway equalization." However, from the Illinois origins from whence moves the preponderance of the barge grain, the only gateway used in constructing combination through rates to the east is Chicago, and no other gateway market is "equalized" therewith under the all-rail adjustment.

"Peoria and St. Louis would, of course, be entitled, on reasonable request, to ex-barge proportionals properly aligned with those approved herein from Chicago, but the record does not contain sufficient detail for the prescription of such proportionals in this proceeding" (262 I. C. C. 7, 32).

347 There is no finding (nor evidence) that ex-barge proportionals cannot be prescribed, or voluntarily established by the carriers, via other routes and gateways, equalizing the barge-rail rates via such other routes and gateways, in alignment with the present reshipping charges on ex-barge grain from Chicago. That the process of equalization of the various routes and gateways had reached maturity as to all-rail rates, and remains to be completed as to barge-rail rates, constitutes no intrinsic difference between all-rail and barge-rail transportation as such, it is not rationally related to the Commission's conclusion that the process of alignment of the ex-barge rates via other routes and gateways should go forward, as the Commission proposes, on the basis of a penalty rate from Chicago on ex-barge grain as against ex-rail grain, thus extending the penalty basis prescribed to barge traffic via other routes and gateways.

(32) As to the alleged difference found by the Commission to exist between barge-rail and all-rail grain traffic in paragraph "3 (c)", above quoted, there is no finding by the Commission (and no evidence in the record) to show that combination through barge-rail rates based on ex-barge reshipping or proportional rates made the same as the ex-lake and ex-rail reshipping or proportional rates, would fail to harmonize with each other and with the local rates in that territory. Such rates would "harmonize" in every sense that the combinations resulting from the rates prescribed by the Commission harmonize. However, barge-rail rates based on inbound water rate factors sufficiently low to reflect the inherent advantages of low cost water competition are necessarily in "disharmony" with all-rail rates based on inbound rate factors reflecting the higher costs of rail service. Such disharmony must exist unless barge-rail combination through rates are made as high as the all-rail combination through rates. They can be

348 made as high in two ways: By increasing the inbound barge factor to equal the inbound rail factor or by increasing the outbound rail factor on the ex-barge traffic by an amount sufficient to offset the difference between the respective inbound rates by barge and by rail. The practical commercial effect of the Commission's order is the same is if it had required a 3-cent increase in the inbound rates by barge in the face of its finding that said barge rates are reasonable and compensatory.

(33) As to the finding of the Commission in paragraph "4" above quoted, we refer to findings hereinabove made, and further find:

(a) The said finding of the Commission does not recite any difference in transportation circumstances and conditions as between ex-lake grain, on the one hand, and ex-barge grain from Kansas City, but, on the contrary finds that such conditions are similar.

(b) Substantial quantities of wheat come to Chicago ex-barge, from Illinois origins. It is also true that over a period of almost four years more wheat came to Chicago by barge from all origins than by lake. (262 I. C. C. 7, 41).[42]

(34) The reshipping rate level to be continued on ex-rail and ex-lake grain is not contingent on the length of the in-bound haul to Chicago; is not contingent on whether the grain moves in continuous service via Chicago or some other gateway or is temporarily stored in Chicago prior to reshipment; is not contingent on the amount of the terminal or interchange service performed by Eastern Railroads in Chicago or other junction points on the shipment or reshipment of the grain; is not contingent on the amount of transit service received by the grain at intermediate points in connection with either the in-bound hauls to Chicago or the out-bound hauls therefrom; and is not contingent on the amount or circuity of the line-haul service on the routes to, via, or from Chicago to ultimate destination. Stated differently, said reshipping rate level is held out by the tariffs of Eastern Railroads and applied to all ex-rail and ex-lake grain reshipped at Chicago; this includes grain which moves in-bound for both short
349 and long distances; and includes grain which moves through Chicago or other gateway or junction points in continuous service and grain which is temporarily stored at Chicago and there transferred from car, boat, or barge to an elevator and then from elevator to car; and includes grain which received substantial transit services at intermediate points east of Chicago, as well as grain which receives no such transit service; and includes grain which moves over direct routes, as well as grain which moves over circuitous routes.

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[42] *Wheat Received at Chicago* (in thousands of bushels):

Year	By lake	By barge
1940		
1941	2,630	773
1942	1,404	1,695
1943 (first 10 months)	863	550
		34
Totals	4,903	5,049

(35) Other findings in the report and order of the Commission disclose that the relative amount of terminal and transit service at the gateways or junctions, the relative amount of transit service at intermediate points in Official territory, the relative amount of line-haul service performed by the Eastern Railroads and the relative lengths of the in-bound hauls do not constitute rate-making considerations observed in the establishment and maintenance of the ex-rail and ex-lake rates. Such findings read as follows:

"The service under the in-bound rail rates to the gateways includes switching to the train at origin, the privilege of intermediate transit stops, not exceeding three, and terminal service at the gateway. The through rates apply whether the traffic moves in continuous through transportation in which case interchange is the only service performed at the junction, or under the governing transit provisions where it is stopped at the gateway or other intermediate point for marketing or processing. In the latter event, the out-bound service generally consists of concentrated movements in large lots of several cars at a time out of terminal elevators." (206 I. C. C. 7, 14.)

"The all-rail adjustment by providing for proportionals or out-bound balances from the gateways, fixed so far as practicable at a uniform figure regardless of origin, gives the merchants and processors at such points the benefits of transit and at the same time assist them in maintaining a common price, thus facilitating hedging and other market operations. The all-rail traffic consists of all kinds of grain and grain products moving for all distances, long and short, over both direct and circuitous routes, in both continuous through transportation and where stopped in transit at the gateways or other intermediate points." (206 I. C. C. 7, 17.)

"Unlike the all-rail traffic, the lake-rail traffic following the water course moves only over circuitous routes, requires transfer of lading, and requires a full origin terminal service when it leaves the interchange port. In other words, it never moves in continuous through transportation. The in-bound lake movement consists chiefly of wheat moving for relatively long distances." (206 I. C. C. 7, 17–18.)

350 36. The Commission found: "As to the ex-lake rates from Chicago, that these do not adversely affect those interested in the barge-rail traffic via Chicago is shown by the fact that if such ex-lake rates were increased, lake grain from the Northwest would continue to flow to the Lake Erie and Hudson River ports, and those interested in the barge-rail traffic via Chicago would be no better off than before." (262 I. C. C. 7, 29) Granting that ex-rail grain, if subjected to the same penalty basis

of rail reshipping rates east of Chicago as prescribed by the Commission on ex-barge grain, would be diverted via lake from Chicago to Lake Erie and Hudson River ports insofar as the same is for the supply of eastern dealers and processors located at eastern destinations (ea Buffalo), the Commission also finds that there is a movement of ex-lake grain from Chicago to dealers and processors in Central Territory (west of Buffalo) for transit there into Eastern Territory under the present parity of reshipping rates;[48] and large areas of Central Territory geographically cannot be served in such transit via lake through Lake Erie and Hudson River ports, but can be and are served with ex-lake grain through Chicago. The only route by which ex-lake grain can be shipped to dealers and processors in Central Territory as aforesaid in competition with ex-barge grain is via Chicago.

(37) The portion of the said order of February 13, 1945, herein complained of which prescribes higher rail reshipping charges on ex-barge than on ex-rail and ex-lake grain east from Chicago, is not supported by the findings of the Commission. The Commission considers matters to warrant said portion of said order that do not warrant it, and that have no rational relation to the conclusion that such ex-barge reshipping rates could lawfully be those higher than such ex-rail and ex-lake reshipping rates, prescribed by the Commission, under the rules and standards prescribed by the Interstate Commerce Act as amended in 1940. The Commission seeks to support said portion of said order by findings that are unsupported by the record.

351 Upon the above and foregoing Findings of Fact, the court states the following:

Conclusions of Law

I.

The portion of the order of February 13, 1945, of the Interstate Commerce Commission which prescribes higher rail reshipping charges east from Chicago on ex-barge grain than on ex-rail and ex-lake grain, is of a character which this court has jurisdiction to enjoin and set aside, and this Court has jurisdiction over the subject matter of said suits.

II.

Plaintiffs in the above-entitled causes have an interest and standing which entitles them to bring and maintain these suits.

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[48] 262 I. C. C. 7, 18. See also footnote 8, supra, and testimony of Witness Tannehill for the eastern railroads at page 92 of the record before the Commission. Between 1933 and November 1, 1943, there were received at Chicago by lake 45,590,000 bushels of grains; by barge, 102,633,000 bushels; by rail 1,485,655,000 bushels (246 I. C. C. on 383; 272 I. C. C. 1, on 41). (These figures are confined to corn, wheat, oats and soybeans; other kinds of grain moving in less volume are not included.)

III.

The portion of the said order of February 13, 1945, herein complained of which prescribes higher rail reshipping charges on ex-barge than on ex-rail and ex-lake grain east from Chicago, is not supported by the findings of the Commission.

IV.

Findings made by the Commission in support thereof are not supported by the record in respects stated in the foregoing Findings of Fact.

V.

The Commission considers matters to warrant said portion of said order that do not warrant it, and that have no rational relation to the conclusion that such ex-barge rail reshipping charges could lawfully be higher than such ex-rail and ex-lake rail reshipping charges as prescribed by the Commission, under the rules and standards prescribed by the Interstate Commerce Act as amended in 1940.

VI.

The Interstate Commerce Commission is without authority directly or indirectly to adjust any rates for the purpose of equalizing the economic advantage of those who are so located as to enjoy low-cost water transportation with the situation of others who by reason of their different location do not enjoy that economic advantage, notwithstanding the Interstate Commerce Commission's own opinion may be that the existence and enjoyment of such natural economic advantage is an inequitable situation.

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VII

Transportation circumstances and conditions involved in and pertaining to transportation by rail from points not accessible to and served by inbound water transportation to points east of Chicago were not material or relevant to the decision of the questions before the Commission; those circumstances and conditions have no rational bearing on the questions for decision which were in issue before the Commission; and the Commission erred in considering such circumstances and conditions in the averages referred to by it in its finding quoted in Finding of Fact No. 27, above.

VIII

In adjusting rail rates or charges on traffic moving via the connecting lines of common carriers who are regulated under the Interstate Commerce Act, whether such connecting carriers are water or rail carriers, and as between the traffic of such connecting

water carriers on the one hand and the traffic of such connecting rail carriers on the other hand, the Interstate Commerce Commission is bound to observe the requirements of Section 3 (4) of Part I of the Interstate Commerce Act as amended by the Transportation Act of 1940, and failed so to do.

IX

The Commission is without authority to remove any inequity found by it to exist by authorizing a rate discrimination between connecting lines.

X

Departures from, or violations of, the long-and-short haul provision of Section 4 of the Interstate Commerce Act, or the principles of that Section, cannot lawfully be cured by means which would violate Section 2 or Section 3 (4) of said Act.

XI

The Interstate Commerce Commission, in adjusting rail rates or charges on traffic moving via the connecting lines of common carriers who are regulated under the Interstate Commerce Act, under the requirements of Section 4 (1) of the Interstate Commerce Act, as amended by the Transportation Act of 1940 (and particularly Section 6 (a) (1) and 6 (b) thereof) is not at liberty to deny or qualify the requirements of Section 3 (4) of the Interstate Commerce Act, as amended by the Transportation Act of 1940.

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XII

The National Transportation Policy enacted by the Transportation Act of 1940 is not precatory, but is mandatory.

XIII

A principal inherent advantage of water transportation is that it is carried on at low cost, and it is the intent of the Interstate Commerce Act as amended in 1940 to include the same among the inherent advantages of all modes of transportation subject to the provisions of the Interstate Commerce Act, and that the Interstate Commerce Commission shall administer all sections of said Act, so as to develop, co-ordinate and preserve a national transportation system by water, highway and rail, as well as other means, adequate to meet the needs of the commerce of the United States, which system incorporates and preserves said inherent low-cost advantage of water transportation.[44]

[44] 81 Cong. Rec. p. 6127.

XIV

The portion of said order of February 13, 1945, which authorizes prescribed higher rail reshipping rates or charges east from Chicago on ex-barge grain than on ex-rail grain is invalid, and should be enjoined as prayed in the complaints.

EVAN A. EVANS.
M. L. IGOE.
WALTER J. LA BUY.

353 In the District Court of the United States for the Northern District of Illinois Eastern Division

Consolidated Case No. 45–C–865

Civil Action File No. 45–C–865

A. L. MECHLING, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF A. L. MECHLING BARGE LINE, PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT, AND INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT

Civil Action File No. 45–C–866

INLAND WATERWAYS CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action File No. 45–C–1020

THE SECRETARY OF AGRICULTURE OF THE UNITED STATES AND THE WAR FOOD ADMINISTRATOR, PLAINTIFFS

vs.

UNITED STATES OF AMERICA, DEFENDANT, AND INTERSTATE COMMERCE COMMISSION, INTERVENING DEFENDANT

Final decree

November 26, 1945

These consolidated causes coming on further to be heard upon the motion of the plaintiffs for a decree, and it appearing that:

(a) The court has entered herein certain Findings of Fact and Conclusions of Law;

(b) The Interstate Commerce Commission in the proceeding before it there known as "Investigation and Suspension Docket 4718, Grain Proportionals, Ex-Barge to Official Territory" referred to in said Findings of Fact entered on February 13, 1945, a certain order, a part of which should be enjoined as stated in said Conclusions of Law.

(c) Thereafter on October 4, 1945, this court entered herein its temporary injunction temporarily restraining such portion of said certain order entered on February 13, 1945, whereupon on the same day the Interstate Commerce Commission entered its further order in the same proceeding before it suspending until May 5, 1946 (unless otherwise ordered by the Commission), the operation of certain tariffs filed in conformity with said portion of said order of February 13, 1945, and especially Supplement 133 to Agent B. T. Jones' I. C. C. No. 3356 and Supplement 27 to Agent B. T. Jones' I. C. C. No. 3363.

Now, therefore, it is ordered, adjudged, and decreed by the court that:

1 Said order of the Interstate Commerce Commission of February 13, 1945, referred to in the pleadings herein, and entered by the Commission in the proceeding before it known as "Investigation and Suspension Docket 4718, Grain Proportionals, Ex-Barge to Official Territory," and the operation and effect of said last mentioned order of the Commission insofar as the same either

(a) Prescribes, approves, authorizes, or countenances in any manner whatever a charge for railroad services in transporting east from Chicago grain that has arrived there by barge that is higher than any rate or charge that is contemporaneously exacted in any form or under any guise for railroad services which do not appear from legally relevant findings of the Commission supported by evidence to be substantially different from
356 railroad services in transporting east from Chicago like ex-rail grain from like origins west of Chicago; or

(b) Prescribes, approves, authorizes or countenances in any manner whatever a rate or charge for transporting ex-barge grain east from Chicago that, on account of alleged differences in conditions and circumstances surrounding the transportation of ex-barge and ex-rail grain, is higher on the ex-barge grain than any rate or charge contemporaneously exacted in any form or under any guise for the rail transportation east from Chicago of like ex-rail grain, or like ex-lake grain, so long as such relative differences also exist between transportation of like ex-rail and ex-lake grain without being reflected in the rail rates or charges for transportation east from Chicago of like ex-rail and ex-lake grain, be and it is hereby, forever enjoined.

2. And the Interstate Commerce Commission is hereby restrained and enjoined from taking any action or step whose effect, direct or indirect, would be to sanction, establish or permit to become effective any rail rates or charges for the transportation of ex-barge grain from Chicago to points lying to the east thereof that are higher than rail rates or charges that are or may be contemporaneously exacted for that service on like ex-rail or ex-lake grain, that are in any way predicated upon the purported authority of the said void portion of the order of the Interstate Commerce Commission of February 13, 1945.

3. This cause is hereby remanded to the Interstate Commerce Commission for further proceedings disposing of said proceedings known as "Investigation and Suspension Docket 4718, Grain Proportionals, Ex-Barge to Official Territory," in conformity with the Findings and Conclusions of this court.

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EVAN A. EVANS,
Circuit Judge.
M. L. IGOE,
District Judge.
WALTER J. LABUY,
District Judge.

359 In the District Court of the United States

Civil Action 45-C-865

Civil Action 45-C-866

Civil Action 45-C-1020

[Titles omitted.]

Petition for appeal

Filed Jan. 24, 1946

The Interstate Commerce Commission, one of the defendants in the above consolidated causes, feeling itself aggrieved by the final decree of the United States District Court for the Northern District of Illinois, Eastern Division, entered in said court on

360 November 26, 1945, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein said defendant considers the decree erroneous are set forth in the assignment of errors accompanying this petition, to which reference is hereby made.

Said defendant prays that a transcript of the record, proceedings and papers on which said decree was made and entered, duly

authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated January 24, 1946.

Daniel W. Knowlton,
DANIEL W. KNOWLTON,
Chief Counsel,
Daniel H. Kunkel,
DANIEL H. KUNKEL,
Attorneys for Interstate Commerce Commission.

362 In the District Court of the United States

Civil Action 45–C–865

Civil Action 45–C–866

Civil Action 45–C–1020

[Titles omitted.]

Assignment of errors

Filed Jan. 24, 1946

Comes now the Interstate Commerce Commission, one of the defendants in the above consolidated causes, and files the following assignment of errors upon which it shall rely in the prosecution of the appeal to the Supreme Court of the United States herewith petitioned for in said causes from the decree of the District Court of the United States for the Northern District of Illinois,
363 Eastern Division, entered on the twenty-sixth (26th) day of November, 1945.

The District Court erred:

1. In entertaining jurisdiction of these causes.

2. In concluding that the portion of the order of February 13, 1945, of the Commission which authorized higher rail reshipping charges east from Chicago on ex-barge grain than on ex-rail and ex-lake grain is of a character which it had jurisdiction to enjoin and set aside.

3. In making independent findings of subordinate facts based upon the record before the Commission.

4. In weighing the evidence and reaching conclusions upon administrative matters contrary to those found by the Commission.

5. In substituting its judgment for that of the Commission on administrative matters which have been placed within the exclusive jurisdiction of the Commission.

6. In entering its findings of fact numbered 4 to 37, inclusive, in that they involve findings of subordinate facts and subordinate conclusions of fact which are beyond the court's competence in a judicial review of the Commission's order in this case, and determinations of administrative matters wholly within the Commission's exclusive authority.

7. In failing to give effect to the Commission's finding that the rates of plaintiff, Mechling Barge Line are not subject to the Commission's jurisdiction where not more than three kinds of grain are transported in a given tow.

8. In failing to give effect to the Commission's finding that the ex-rail proportionals from Chicago are subject to a fourth-section rule, the effect of which, as to Trunk Line and New England territories, is to limit application of such proportionals to traffic on which an in-bound rate of not less than 8.5 cents has been paid.

364 9. In failing to give effect to the Commission's finding that under the all-rail adjustment the through rates and eastern factors thereof on grain from the barge origins are substantially lower than they would be under an adjustment from all-rail origins west of Chicago of the same average level but made on a distance scale where the out-bound balances or proportionals would vary inversely with the length of the in-bound and through hauls.

10. In failing to give effect to the Commission's finding that in-bound rail rates on grain from Illinois origins to Chicago, generally less than 8.5 cents, made to meet truck and water competition and known as lake locals, do not engage the ex-rail proportionals from Chicago.

11. In failing to give effect to the Commission's finding that the present proportionals can be and are maintained on ex-rail grain and at the same time farmers and all others concerned are accorded through rates from origins west of Chicago which harmonize with the local rates in the destination territory and are generally in strict conformity with the fourth section.

12. In failing to give effect to the Commission's finding that country elevators are located on the rails throughout the origin territory with only a short truck haul thereto from the farms.

13. In failing to give effect to the Commission's finding that on the all-rail traffic there is only one intermediary between the farmer and the dealer at the primary market.

14. In failing to give effect to the Commission's finding that the all-rail traffic consists of all kinds of grain and grain products moving for all distances, long and short, over both direct and circuitous routes, in both continuous through transportation and where stopped in transit at the gateways or other intermediate points.

365 15. In holding the Commission's findings that the rail-lake-rail combinations are in harmony with fourth-section principles, that Chicago is primarily an out-bound lake port on grain, and that rail-lake grain can and generally does bypass it entirely, to be without pertinency.

16. In holding the Commission's finding that the ex-barge proportionals are not subject to the forth-section rule so that the barge-rail combinations from Illinois are in most instances far below the all-rail rates from Illinois origins and also far below the local rail rates from intermediate origins in Indiana, Ohio, and western Pennsylvania, constituting numerous and extreme fourth-section departures, to be without pertinency.

17. In failing to give effect to the Commission's findings that the Illinois farmers were hurt by the application of the existing barge proportionals and that the plaintiffs were inconsistent in asking that the ex-barge grain be accorded these rates but not be subject to the same rules as the ex-rail grain.

18. In failing to give effect to the Commission's finding that the service under the ex-rail proportionals in connection with direct all-rail routes is less than under the ex-barge proportionals from Chicago.

19. In holding the Commission's finding that there is more transit service under ex-barge than under ex-rail proportionals, to be without pertinency.

20. In failing to give effect to the Commission's findings that in-barge transportation two intermediaries are required between the farmer and the dealer at the primary market and that barge grain cannot be transported from or to rail facilities away from the river at Kansas City and Chicago, respectively, without transfer of lading and extra switching.

366 21. In failing to give effect to the Commission's finding that the farmer depending on the Kansas City market receives no benefit from barge transportation.

22. In failing to give effect to the Commission's finding that the fourth-section rule and relative service limitation, usually imposed in barge-rail cases, if imposed in the instant case would result in considerably higher ex-barge proportionals than those approved.

23. In holding that the Commission's findings with respect to the average circumstances and conditions as between all-rail and lake-rail, on the one hand, and barge-rail, on the other, do not disclose a rational relation between such differences and the difference in the reshipping rate authorized as compared with the existing reshipping charges hitherto applicable alike on ex-rail, ex-lake and ex-barge grain.

24. In failing to give effect to the Commission's finding as to the essential nature and function of the ex-rail proportionals or specifics here considered.

25. In finding that the barge carriers will not have a fair opportunity to compete with the rail and lake carriers under the ex-barge proportionals approved by the Commission.

26. In failing to give effect to the Commission's finding that ex-barge traffic cannot be averaged with the ex-rail transportation and accorded the same out-bound proportionals if, as the act requires, the inherent advantage of each form of transportation is to be preserved, for to do so would not only give full effect to the lower in-bound cost but, in addition, would extend to the barge-rail transportation most of the advantages of all-rail transportation.

27. In characterizing the ex-barge proportionals approved by the Commission as penalty rates.

28. In concluding that the portion of the said order of
367 February 13, 1945, which approved higher rail reshipping charges on ex-barge grain than on ex-rail and ex-lake grain east from Chicago, is not supported by the findings of the Commission.

29. In concluding that the findings made by the Commission are not supported by the record in respects stated in the Findings of Fact.

30. In concluding that matters considered by the Commission in approving the scale of ex-barge proportionals set out in its report have no rational relation to the conclusion that such ex-barge rail reshipping charges could lawfully be higher than ex-rail and ex-lake reshipping charges under the rules and standards of the Interstate Commerce Act.

31. In concluding that transportation circumstances and conditions involved in and pertaining to transportation by rail from points not accessible to and served by inbound water transportation to points east of Chicago were not material or relevant to the decision of the questions before the Commission; that those circumstances and conditions have no rational bearing on the questions for decision which were in issue before the Commission; and that the Commission erred in considering such circumstances and conditions in the averages referred to by it in its finding quoted in Finding of Fact No. 27.

32. In concluding that the Commission with respect to that portion of the order complained of failed to observe the requirements of section 3 (4) of the Interstate Commerce Act.

33. In concluding that the portion of the order of the Commission of February 13, 1945, which authorizes higher rail reshipping rates or charges east from Chicago on ex-barge grain than on ex-rail grain is invalid and should be enjoined.

34. In entering its final decree of November 27, 1945.

35. In entering its decree of October 4, 1945, temporarily,
368 restraining the operation and effect of said order of February 13, 1945, and requiring the Commission to suspend the tariff schedules filed in conformity to the authority conferred by said report and order of February 13, 1945.

36. In failing to find that said order of February 13, 1945, was:

a. Within the jurisdiction of the Commission.

b. Supported by substantial evidence.

c. Founded upon essential findings of fact lending rational support to the conclusion reached.

d. Free from any error of law.

e. Free from abuse of discretion or power by the Commission.

37. In failing to dismiss the complaints.

Dated January 24, 1946.

Daniel W. Knowlton,
DANIEL W. KNOWLTON,
Chief Counsel,
Daniel H. Kunkel,
DANIEL H. KUNKEL,
Washington, D. C.
Attorney for Interstate Commerce Commission.

370 In the District Court of the United States

Civil Action 45-C-865

Civil Action 45-C-866

Civil Action 45-C-1020

[Titles Omitted.]

Order allowing appeal

January 24, 1946

In the above-entitled consolidated causes, the Interstate Commerce Commission, one of the defendants therein, having made and filed its petition praying for an appeal to the Supreme Court of the United States from the final decree of this Court entered November 26, 1945, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such cases made and provided;

371 It is ordered and decreed, that the appeal be, and the same is hereby allowed as prayed for;

And it is further ordered, that the Clerk of Court transmit to the United States Supreme Court, as part of the record herein, the original papers, in lieu of copies thereof, as may be designated by appellant's and appellees' praecipes for transcript of the record filed pursuant to Rule 10 of the Revised Rules of the Supreme Court of the United States.

Dated January 24, 1946.

By IGOE,
United States District Judge.

372 [Citation in usual form showing service on Edward B. Hayes, et al., filed Jan. 24, 1946, omitted in printing.]

376 In the District Court of the United States

Civil Action 45–C–865

Civil Action 45–C–866

Civil Action 45–C–1020

[Titles omitted.]

Motion for order enlarging time for docketing the case and filing the record thereof with the clerk of the Supreme Court

Filed Jan. 24, 1946

Now comes the Interstate Commerce Commission, defendant-appellant in the above causes, and moves the Court, pursuant to Rule 11, paragraph 1, of the Revised Rules of the Supreme Court, to enlarge the time for docketing the appeal and the filing of the record thereof in the Supreme Court of the United
375 States, and in support of said motion respectfully shows:

1. That record in these causes is voluminous consisting not only of the proceedings in the hearings in these causes but including also the transcript of hearings before the Interstate Commerce Commission and numerous exhibits in the protracted proceeding out of which these causes grew.

2. The preparation of this record and its transmission to the Clerk of the Supreme Court of the United States cannot conveniently be accomplished within the time fixed by the Revised Rules of the Supreme Court of the United States.

Daniel W. Knowlton,
DANIEL W. KNOWLTON,
Chief Counsel,
Daniel H. Kunkel,
DANIEL H. KUNKEL,
Attorneys for Interstate Commerce Commission.

Order.

Upon motion of the Interstate Commerce Commission, defendant-appellant, and good cause having been shown,

It is ordered, That the time for docketing the case and the filing of the record thereof, in the Supreme Court of the United States, be and the same is hereby enlarged for further period of 30 days from the return day of the citation on appeal.

Dated January 24, 1946.

IGOE,
United States District Judge.

378 CERTIFICATE OF SERVICE

I hereby certify that I served the above motion and order by mailing copies thereof to each of the attorneys for appellees addressed as follows: Edward B. Hayes, Esq., 2400 Field Building, Chicago 3, Ill., Attorney for A. L. Mechling, Appellee. Luther M. Walter, Esq., 2106 Field Building, Chicago 3, Ill., Attorney for Inland Waterways Corporation, Appellee. James K. Knudson, Esq., Department of Agriculture, Washington, D. C., Attorney for the Secretary of Agriculture and War Food Administrator, Appellees.

DANIEL H. KUNKEL,
Attorney for Interstate Commerce Commission.

380 In the District Court of the United States

Civil Action 45–C–865

Civil Action 45–C–866

Civil Action 45–C–1020

[Titles omitted.]

Praecipe for transcript of record

Filed Jan. 24, 1946

To the Clerk of the above-named Court:

You will please prepare a transcript of the record in the above-entitled consolidated causes to be transmitted to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Complaint and exhibits attached thereto in 45–C–865.
2. Complaint and exhibits attached thereto in 45–C–866.

381 3. Complaint and exhibits attached thereto in 45–C–1020.

4. Intervention and Answer of Interstate Commerce Commission in 45–C–865.

5. Answer of Interstate Commerce Commission in 45–C–866.
6. Intervention and Answer of Interstate Commerce Commission in 45–C–1020.
7. Motion for temporary restraining order and affidavit in support thereof.
8. Temporary restraining order entered October 4, 1945.
9. Transcript of record of final hearing on the merits on October 16, 1945, together with exhibits introduced in evidence including record before Interstate Commerce Commission in I. & S. 4718, Grain Proportionals, Ex-Barge to Official Territory.
10. Findings of Fact and Conclusions of Law filed November 26, 1945.
11. Final decree entered November 26, 1945.
12. Petition for appeal.
13. Assignment of errors.
14. Order allowing appeal.
15. Citation on appeal.
16. Statement directing attention to paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States and proof of service.
17. Motion and order enlarging the time for docketing the appeal and filing the record with the Clerk of the Supreme Court of the United States.
18. This praecipe.

Dated January 24, 1946.

Daniel W. Knowlton.
DANIEL W. KNOWLTON,
Chief Counsel.
Daniel H. Kunkel.
DANIEL H. KUNKEL,
Attorneys for Interstate Commerce Commission.

CERTIFICATE OF SERVICE

382 I hereby certify that I served the above praecipe by mailing copies thereof to each of the attorneys for appellees addressed as follows: Edward B. Hayes, Esq., 2400 Field Building, Chicago 3, Ill., Attorney for A. L. Mechling, Appellee. Luther M. Walter, Esq., 2106 Field Building, Chicago 3, Ill., Attorney for Inland Waterways Corporation, Appellee. James K. Knudson, Esq., Department of Agriculture, Washington, D. C., Attorney for the Secretary of Agriculture and War Food Administrator, Appellees.

DANIEL H. KUNKEL,
Attorney for Interstate Commerce Commission.

384 In the District Court of the United States

Civil Action 45–C–865

Civil Action 45–C–866

Civil Action 45–C–1020

[Titles omitted.]

Plaintiffs' (Appellees') praecipe and designation of additional portions of the record desired to be included in the transcript of record on appeal

Filed Feb. 1, 1946

To the Clerk of the above-named Court:

You are hereby requested in preparing the transcript of the record in the above-entitled causes to be filed in the Supreme Court of the United States pursuant to the appeal allowed therein to include in such transcript the following portions of the record in addition to those indicated by the defendant (appellant), to wit:

1. Answer of United States of America in 45–C–865.
2. Answer of United States of America in 45–C–866.
3. Answer of United States of America in 45–C–1020.
4. All affidavits in support of motion for temporary injunction.
5. Transcript of hearing on motion for temporary injunction, together with evidence and exhibits offered in support thereof.
6. Any motions to dismiss or affirm, any oppositions thereto and any orders thereon.
7. The order consolidating said causes.
8. This designation of additional portions of the record.

Edward B. Hayes.
EDWARD B. HAYES,
Room 2400 Field Building, Chicago 3, Illinois, Attorney for A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, Plaintiff (Appellee).

Luther M. Walter,
LUTHER M. WALTER,
Room 2106 Field Building, Chicago 3, Illinois, Attorney for Inland Waterways Corporation, Plaintiff (Appellee).

James K. Knudson,
JAMES K. KNUDSON,
Department of Agriculture, Washington, D. C., Attorney for Secretary of Agriculture and War Food Administrator, Plaintiff (Appellee).

385 CERTIFICATE OF SERVICE

I hereby certify that I served the above praecipe and designation of additional portions of the record desired to be included in the transcript of record on appeal by mailing copies thereof to the attorneys for appellant addressed as follows: Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, Interstate Commerce Commission Building, Washington 25, D. C. Daniel H. Kunkel, Attorney for Interstate Commerce Commission, Interstate Commerce Commission Building, Washington 25, D. C.

Edward B. Hayes,
EDWARD B. HAYES,
Attorney for A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, Plaintiff (Appellee).

Dated February 1, 1946.

387 In the District Court of the United States

Civil Action 45-C-865

Civil Action 45-C-866

Civil Action 45-C-1020

[Titles omitted.]

Order

February 4, 1946

Upon motion of the plaintiffs and appellees herein, and good cause having been shown;

It is ordered that the time within which praecipe or designation of additional matters to be included in the transcript on appeal or any supplement or amendment thereof, together with proof of service thereof, is hereby extended to and including February 28, 1946.

Enter:

IGOE,
United States District Judge.

Dated February 4th, 1946.

389 In the District Court of the United States

Civil Action 45-C-865

Civil Action 45-C-866

Civil Action 45-C-1020

[Title omitted.]

Order to show cause

February 12, 1946

This matter coming on for hearing upon the motion of the United States for service upon the Interstate Commerce Commission, intervening defendant in the above-captioned cases, of an order to show cause why the United States should not be designated as a party to the appeal attempted to be taken by the Commission on January 24, 1946, in the said cases, and served with appeal papers therein as required by law, and after hearing thereon, for an order designating the United States as a party to the said appeal and requiring the Commission to serve upon the United States all appeal papers required to be served upon it in appeals taken from judgments entered in cases brought to set aside orders of the Commission; the Court having considered the motion and examined the records maintained by the Clerk
390 in each of the said cases; and being fully advised in the premises,

It is hereby ordered and adjudged, That the Interstate Commerce Commission show cause before me on February 21st, 1946, at 10 o'clock A. M., Court Room No. 627, United States Courthouse, Chicago, Illinois, why the United States should not be designated as a party to the appeal attempted to be taken by the Commission on January 24, 1946, in the said cases and should not be served with appeal papers therein as required by law, and why an order should not be entered by this Court designating the United States as a party to the said appeal and requiring the Commission to serve upon the United States all appeal papers required to be served upon it in appeals taken from judgments entered in cases brought to set aside orders of the Commission; and

It is further ordered and adjudged, That the motion for an order to show cause filed by the United States and this order be served upon counsel of record for the Interstate Commerce Commission in the said cases, more than 4 days in advance of the time fixed herein for hearing upon this order, by mailing to them by the United States registered mail true copies of the said motion

and order at their addresses as shown by the records in the cases kept by the clerk.

By MICHAEL L. IGOE,
United States District Judge.

Dated this 12 day of February 1946.

391 In the District Court of the United States

Civil Action 45–C–865

Civil Action 45–C–866

Civil Action 45–C–1020

[Titles omitted.]

Order

February 21, 1946

This matter coming on for hearing upon the order heretofore issued and served upon the Interstate Commerce Commission in the above-captioned cases to show cause why the United States should not be designated as a party to the appeal heretofore taken on January 24, 1946; arguments having been heard and the court being fully advised in the premises,

392 It is hereby ordered, that the Interstate Commerce Commission serve upon the United States true copies of the order allowing appeal, citation on appeal directed to the United States, and all other papers required by law to be served upon parties to appeals on or before February 26, 1946, and the order allowing appeal and citation on appeal are hereby amended accordingly.

IGOE,
United States District Judge.

Dated February 21st, 1946

394 In the District Court of the United States

Civil Action 45–C–865

Civil Action 45–C–866

Civil Action 45–C–1020

[Titles omitted.]

Plaintiffs' (Appellees') supplemental praecipe and designation of additional portions of the record desired to be included in the transcript of record on appeal

Filed February 25, 1946

To the Clerk of the above-named Court:

You are hereby requested in preparing the transcript of the record in the above-entitled causes to be filed in the Supreme Court

of the United States, pursuant to the appeal allowed therein,
395 to include in such transcript the following portions of the record in addition to those indicated by the defendant (appellant) and by the praecipe filed herein by the plaintiffs (appellees) on the 1st day of February 1946.

1. Order entered on February 4, 1946, extending time for filing praecipe or designation of additional matters to be included in transcript on appeal or any supplement or amendment thereof to and including February 28, 1946.

2. Order entitled Order to Show Cause entered on February 12, 1946.

3. Order entered February 21, 1946, upon the return of the Order to Show Cause next above mentioned.

4. This supplemental praecipe.

Edward B. Hayes,
EDWARD B. HAYES,

Room 2400 Field Building, Chicago 3, Illinois, Attorney for A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, Plaintiff (Appellee).

Luther M. Walter,
LUTHER M. WALTER,

Room 2106 Field Building, Chicago 3, Illinois, Attorney for Inland Waterways Corporation, Plaintiff (Appellee).

James K. Knudson,
JAMES K. KNUDSON,

Department of Agriculture, Washington, D. C., Attorney for Secretary of Agriculture and War Food Administrator, Plaintiff (Appellee).

396 CERTIFICATE OF SERVICE

I hereby certify that I served the above supplemental praecipe and designation of additional portions of the record desired to be included in the transcript of record on appeal by mailing copies thereof to the attorneys for appellant addressed as follows: Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, Interstate Commission Building, Washington 25, D. C. Daniel H. Kunkel, Attorney for Interstate Commerce Commission, Interstate Commerce Commission Building, Washington 25, D. C.

EDWARD B. HAYES,
EDWARD B. HAYES,

Attorney for A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, Plaintiff (Appellee).

Dated February 25, 1946.

398 In the District Court of the United States

Civil Action 45–C–865

Civil Action 45–C–866

Civil Action 45–C–1020

[Titles omitted.]

Supplemental assignment of errors

Filed February 28, 1946

In addition to the assignment of errors heretofore filed with the petition for appeal, the Interstate Commerce Commission assigns as error the following:

The Court erred:

1. In entertaining, considering and passing upon motion of the United States for rule to show cause why it should not be made party to the appeal and served with the appeal papers.

399 2. In entering its order of February 21, 1946, upon said motion.

Daniel W. Knowlton,
DANIEL W. KNOWLTON,
Chief Counsel,
Daniel H. Kunkel,
DANIEL H. KUNKEL,
Attorneys for Interstate Commerce Commission.

Dated, February 26, 1946.

401 In the District Court of the United States

Civil Action 45–C–865

Civil Action 45–C–866

Civil Action 45–C–1020

[Titles omitted.]

Supplemental Praecipe

Filed February 28, 1946

To the Clerk of the above-named Court:

In addition to the papers heretofore designated by appellant under date of January 24, 1946, will you include in the transcript of the record to be transmitted to the Clerk of the Supreme Court of the United States the following:

1. Appellees' statement opposing jurisdiction and motion to dismiss and affirm.

402 2. Memorandum of the Interstate Commerce Commission in opposition to the said statement.

3. Motion of the United States for rule to show cause why it should not be served with the appeal papers.

4. Order of Court of February 21, 1946, upon said motion.

5. Supplemental assignment of errors and proof of service filed herewith.

6. This supplemental praecipe.

Daniel W. Knowlton,
DANIEL W. KNOWLTON,
Chief Counsel,
Daniel H. Kunkel,
DANIEL H. KUNKEL,
Attorneys for Interstate Commerce Commission.

Dated, February 26, 1946.

403 [Clerk's certificate to foregoing transcript omitted in printing.]

404 In the Supreme Court of the United States

Statement of points to be relied upon and designation of parts of record to be printed

Filed April 9, 1946

Appellant Interstate Commerce Commission, pursuant to Rule 13, paragraph 9, states that it will rely upon the points made in its assignment of errors and for the purpose of enabling this Court to consider said points designates the following parts of the record to be printed:

Appellant's praecipe for transcript of record: Item 1; Items 2 and 3, except exhibits attached to the complaint; Items 4 to 8, inclusive; Item 9, except that portion of the record before the Interstate Commerce Commission in I. & S. 4718, Grain Proportionals Ex-Barge to Official Territory, made prior to June 13, 1943; Items 10 to 18, inclusive.

Appellant's supplemental praecipe: Items 3, 4, and 5.

Dated April 9, 1946.

Daniel W. Knowlton,
DANIEL W. KNOWLTON,
Chief Counsel,
Daniel H. Kunkel,
DANIEL H. KUNKEL,
Attorney for Appellant.

405 CERTIFICATE OF SERVICE

It is hereby certified that a copy of the above was this day served upon counsel for appellees by mailing the same to them addressed as follows: Edward B. Hayes, Esq., 2400 Field Building, Chicago 3, Ill., Attorney for A. L. Mechling, Appellee. Luther M. Walter, Esq., 2106 Field Building, Chicago 3, Ill., Attorney for Inland Waterways Corporation, Appellee. James K. Knudson, Esq., Department of Agriculture, Washington, D. C., Attorney for the Secretary of Agriculture, Appellee. The Attorney General of the United States, Department of Justice, Washington 25, D. C., Appellee.

Daniel H. Kunkel,
DANIEL H. KUNKEL,
Attorney for Appellant.

408 In the Supreme Court of the United States

Appellee United States' designation of additional parts of record to be printed

Filed April 20, 1946

Appellee United States designates for printing the following parts of the record transmitted by the clerk of the District Court of the United States for the Northern District of Illinois, to the Clerk of the Supreme Court of the United States, in addition to those parts heretofore designated by appellant Interstate Commerce Commission:

The entire record in the District Court, including pleadings, docket entries, findings of fact, conclusions of law and decree of the Court, stenographer's transcript of proceedings at the trial, and all exhibits received in evidence in the District Court, including in particular the entire record of proceedings before the Interstate Commerce Commission, including all exhibits received in evidence by the Commission.

April 19, 1946.

J. Howard McGrath,
J. HOWARD MCGRATH,
Solicitor General.

409 I hereby certify that a true copy of the foregoing appellee United States' designation of additional parts of record to be printed was mailed this day to: Daniel W. Knowlton, Esq., Chief Counsel, Interstate Commerce Commission, Washington 25, D. C. Daniel H. Kunkel, Esq., Attorney, Interstate Commerce Commission, Washington 25, D. C., Counsel for Interstate

Commerce Commission, Appellant. Edward B. Hayes, Esq., 2400 Field Building, Chicago 3, Illinois, Counsel for A. L. Mechling, Appellee. Luther M. Walter, Esq., 2106 Field Building, Chicago 3, Illinois, Counsel for Inland Waterways Corporation, Appellee. James K. Knudson, Esq., Department of Agriculture, Washington, D. C., Counsel for the Secretary of Agriculture, Appellee.

Dated this 19 day of April 1946.

David O. Mathews,
DAVID O. MATHEWS,
Special Assistant to the Attorney General,
Department of Justice, Washington 25, D. C.

410 In the Supreme Court of the United States

Stipulation as to record

Filed September 26, 1946

In lieu of the designations of parts of the record to be printed heretofore filed by parties to the above appeal, it is hereby stipulated and agreed as follows by and between all parties to the said cause:

I. The following matters contained in the record on appeal shall be printed as Volume 1 of the printed record:

1. Complaint and exhibits attached thereto in 45C865 (appellant's praecipe, Item 1).

2. Complaint in 45C866, excluding exhibits (appellant's praecipe, Item 2).

3. Complaint and exhibits attached thereto in 45C1020 (appellant's praecipe, Item 3).

4. Intervention and answer of Interstate Commerce Commission in 45C865 (appellant's praecipe, Item 4).

5. Answer of Interstate Commerce Commission in 45C866 (appellant's praecipe, Item 5).

6. Intervention and answer of Interstate Commerce Commission in 45C1020 (appellant's praecipe, Item 6).

7. Answer of the United States in 45C865 (appellees' praecipe, Item 1).

8. Answer of United States in 45C866 (appellees' praecipe, Item 2).

9. Answer of United States in 45C1020 (appellees' praecipe, Item 3).

10. Motion for temporary restraining order and affidavit in support thereof (appellant's praecipe, Item 7).

11. All affidavits in support of motion for temporary injunction (appellees' praecipe, Item 4).

12. Transcript of hearing on motion for temporary injunction together with evidence and exhibits offered in support thereof (appellees' praecipe, Item No. 5).

13. Temporary restraining order entered October 4, 1945 (appellant's praecipe, Item 8).

14. Order consolidating the causes (appellees' praecipe, Item 7).

15. Transcript of record of final hearing on the merits on October 16, 1945, excluding exhibits (appellant's praecipe, Item 9).

16. Findings of fact and conclusions of law filed November 26, 1945 (appellant's praecipe, Item 10).

17. Final decree entered November 26, 1945 (appellees' praecipe, Item 11).

18. Petition for appeal (appellees' praecipe, Item 12).

19. Assignment of errors (appellees' praecipe, Item 13).

20. Order allowing appeal (appellant's praecipe, Item 14).

21. Citation on appeal (appellant's praecipe, Item 15).

22. Statement directing attention to paragraph 3 of Rule 12 and proof of service (appellant's praecipe, Item 16).

23. Motion and order enlarging time for docketing appeal, etc. appellant's praecipe, Item 17).

412 24. Appellant's praecipe (appellant's praecipe, Item 18).

25. Appellees' praecipe (appellees' praecipe, Item 8).

26. Order of February 4, 1946, extending time for filing praecipe, etc. (appellees' supplemental praecipe, Item 1).

27. Order entitled "Order to Show Cause," entered February 12, 1946 (appellees' supplemental praecipe, Item 2).

28. Order entered February 21, 1946, upon return of order to show cause (appellees' supplemental praecipe, Item 3).

29. Appellees' supplemental praecipe (appellees' supplemental praecipe, Item 4).

30. Supplemental assignment of errors and proof of service (appellant's supplemental praecipe, Item 5).

31. Appellant's supplemental praecipe (appellant's supplemental praecipe, Item 6).

II. There shall be printed as further volumes of the printed record such portions of the complete record of the proceedings before the Interstate Commerce Commission as shall be specified by subsequent stipulation of the parties to this appeal or by such amended designations of parts of the record to be printed as may hereafter be filed, by the appellees who have heretofore filed designations of parts of the record to be printed, following receipt by them of appellant's brief, which appellant agrees to furnish on or before September 20, 1946, or by order of the Court upon appellant's motion heretofore filed for diminution of the record.

III. Any party may make reference in brief or argument to any matter in the record on appeal, whether printed or not.

IV. It is further stipulated and agreed that Items 1 and 2 of appellant's supplemental praecipe shall be eliminated from and not deemed a part of the record on appeal, the same not having been part of the record in the district court.

This 2d day of August 1946.

413 J. Howard McGrath,
J. HOWARD McGRATH,
Solicitor General for United States of America,
Appellee.

JAMES A. DOYLE,
For Secretary of Agriculture and War Food Administrator,
Appellee.

EDWARD B. HAYES,
For A. L. Mechling,
Appellee.

NUEL D. BELNAP,
For Inland Waterways Corporation,
Appellee.

DANIEL H. KUNKEL,
For Interstate Commerce Commission,
Appellant.

414 Supreme Court of the United States

Order noting probable jurisdiction

April 29, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice JACKSON took no part in the consideration or decision of this question.

[Endorsement on cover:] Enter Daniel W. Knowlton. File No. 50713. Northern Illinois, D. C. U. S. Term No. 72, The Interstate Commerce Commission, Appellant *vs.* A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, Inland Waterways Corporation, The Secretary of Agriculture, War Food Administrator and the United States of America. Filed March 27, 1946. Term No. 72 O. T. 1946.

U. S. GOVERNMENT PRINTING OFFICE 1946